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FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C-837]

General Railway Signal Co., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: The Federal Trade Commission has modified a 1964 consent order (29 FR 10471, *correction* 29 FR 14492) by permitting General Railway Signal Co., et al. to engage in any conduct or enter any agreement that is ancillary to and reasonably necessary for the formation or operation of a joint venture that is lawful under the antitrust laws.

DATES: Consent Order issued September 24, 1964. Modified Order issued December 10, 1987.

FOR FURTHER INFORMATION CONTACT: FTC/S-2115, Daniel Ducore, Washington, DC 20580, (202) 326-2687.

SUPPLEMENTARY INFORMATION: In the Matter of General Railway Signal Co., et al. The prohibited trade practices and/or corrective actions, as set forth at 29 FR 14071, remain unchanged.

List of Subjects in 16 CFR Part 13

Railroad signaling equipment, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 2, 49 Stat. 1526; 15 U.S.C. 45, 13)

Order Modifying Consent—Issued September 24, 1964

Commissioners: Daniel Oliver, Chairman, Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

On August 12, 1987, General Railway Signal Company ("General Railway"), filed a "Request to Reopen Proceeding and Modify Order" ("Request"), pursuant to § 2.51 of the Commission's Rules of Practice. The Request asks the Commission to reopen the proceeding and modify the consent order issued September 24, 1964, ("the Order") to permit General Railway to engage in any conduct or enter any agreement that is ancillary to and reasonably necessary for the formation or operation of a joint venture that is lawful under the antitrust laws.

The Commission has previously considered the petition of American Standard Inc. ("American Standard"), successor to respondent Westinghouse Air Brake Co. ("WABCO"), which requested, among other things, that the Commission modify the order in Docket No. C-837 to permit American Standard to engage in lawful joint venture activity. On November 13, 1986, the Commission granted that request in the public interest, finding that American Standard had made an adequate showing that currently evolving technological and economic factors in the railroad signaling equipment and systems industry have created a competitive need for American Standard to participate in joint ventures to research, develop and produce integrated railroad systems and to bid for turnkey railroad projects.

After reviewing General Railway's Request and other relevant information, the Commission has concluded that it is in the public interest to modify the Order to permit General Railway to engage in conduct that is ancillary to and reasonably necessary for the formation or operation of any joint venture that is lawful under the antitrust laws. General Railway has made an adequate showing that the same industry conditions that warranted modification of the order to permit American Standard to engage in lawful joint venture activity also warrant modification of the order to extend General Railway the same relief. The currently evolving technological and economic factors in the railroad signaling equipment and systems industry cited by General Railway, and previously cited by American Standard, have created a competitive need for General Railway to also participate in joint ventures to research, develop and produce integrated railroad systems and to bid for turnkey railroad projects. The Order's present language, designed to restrain conduct that might facilitate collusive agreements, could be interpreted to prohibit otherwise lawful joint venture activity. It is in the public interest to modify the Order to enable General Railway to participate in otherwise lawful joint venture activity because the competitive injury that General Railway will likely suffer if it cannot engage in such lawful activity is not outweighed by any need to retain the Order in its current form.[1]

Accordingly, it is ordered that this matter be and it hereby is reopened and that the Commission's Order issued on September 24, 1964, be and it hereby is modified to make the new subparagraph (4), which was previously added by the Commission on November 13, 1986, read as follows:

(4) Nothing contained in the foregoing paragraphs of the Order shall be construed to prohibit respondents WABCO and General Railway Signal Company from engaging in any conduct or entering into any agreement that is ancillary to and reasonably necessary for the formation or operation of a joint venture that is lawful under the antitrust laws.

By direction of the Commission.

Emily H. Rock,

Secretary.

Issued: December 10, 1987.

[FR Doc. 88-388 Filed 1-8-88; 8:45 am]

BILLING CODE 6750-01-M

[1] The Order's provisions are aimed at horizontal conduct and agreements. The Order language prohibiting agreements with "any other person, persons or business entity not a party hereto" is limited by the existing exemption for any "bona fide offer, agreement or transaction with any other person, persons or business entity to purchase or sell railroad signaling and control systems or railroad signaling equipment at prices, terms or conditions of sale independently determined and offered and independently accepted." The new modification for lawful joint venture activities will be a further limitation. The "any other person . . . not a party hereto" language will, in practical effect, mean only vendors of signaling equipment or systems.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Application and Closing Out of Offsetting Long and Short Positions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted an amendment to § 1.46 of its regulations, 17 CFR 1.46 (1987), to provide an additional exception to the general rule pertaining to the application, and closing out, by a futures commission merchant ("FCM") of offsetting long and short commodity futures or option positions in a customer account or option customer account. The additional exception applies to purchases and sales of commodity futures or option contracts made in

separate accounts owned by one customer, provided that, among other things, the trading for such accounts is directed by two or more persons acting independently, each of which is directing the trading of a separate account.

EFFECTIVE DATE: March 11, 1988.

FOR FURTHER INFORMATION CONTACT: Michael A. Watkins, Attorney-Advisor, Division of Trading and Markets, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Background

On October 20, 1986 (51 FR 37196), the Commission published in the **Federal Register**, in response to a petition for rulemaking, a proposed amendment to § 1.46 of its regulations, 17 CFR 1.46 (1987). The proposed amendment would provide an additional exception to the general rule pertaining to the application, and closing out, by a futures commission merchant ("FCM") of offsetting long and short commodity futures or option positions in a customer account or option customer account. 51 FR 37196.

Section 1.46(a) of the Commission's regulations generally requires that an FCM close out a customer's or option customer's previously-held short or long commodity futures or option position if an offsetting purchase or sale is made for such customer's or option customer's account, and that an FCM furnish promptly to such customer or option customer a purchase-and-sale statement showing the financial result of the transactions involved. Section 1.46(b) generally provides that if the short or long position in the account of such customer or option customer immediately prior to the offsetting purchase or sale is greater than the quantity purchased or sold, the FCM must apply the offsetting purchase or sale to the oldest portion of the previously-held short or long position, unless the customer or option customer specifically instructs otherwise. There are five other exceptions to § 1.46.[1]

The petition for rulemaking requested that the Commission establish an additional exception to the requirements of paragraphs (a) and (b) of § 1.46 for purchases or sales of commodity futures or option contracts made in separate accounts owned by one customer, provided that, among other things, (1) the trading for such accounts is directed either by two or more persons acting independently, each of which is directing the trading of a separate account, or (2) the trading is directed pursuant to two or more separate and distinct trading systems, each of which determines the trading of a separate account. The petitioner stated that an exception to the mandatory offset requirement would (1) be consistent with the purposes of § 1.46, (2) afford customers necessary flexibility in selecting and implementing diversified trading strategies, and (3) benefit FCMs by reducing the burden of identifying and offsetting customer positions in multiple accounts. The Commission stated its belief that any exception to § 1.46 for accounts of individuals should be similar to the exception set forth in § 1.46(d)(4), adopted two years earlier, concerning separate accounts of commodity pools. 51 FR 37196, 37198. The new amendment, adopted herein, is intended generally to provide that symmetrical treatment.

In its release setting forth the proposed amendment, the Commission specifically requested commenters to address the following five issues. First, what standards should determine whether different trading decisions, made by the same person for different accounts, have been arrived at independently? Second, should two associated persons ("APs") of the same FCM be deemed nonaffiliated and thus able to qualify for this exemption? Third, if an FCM or one of its APs directs trading for at least one of the separate accounts, should an FCM furnish the customer quarterly a consolidated account statement for all separate accounts carried by the FCM that states essentially the same information required under § 4.22(a) (1) and (2) to be furnished by a commodity pool operator? Fourth, should the FCM provide a separate disclosure advising that a customer may experience a net loss on offsetting positions maintained in the customer's separate accounts because of extra fees, commissions and margin requirements? Finally, can the Commission achieve its regulatory purposes by adopting only the proposed reporting requirement or only the proposed disclosure requirement discussed above?

The Commission received five comment letters, one from each of the following: Brokerage Systems, Incorporated ("BSI") (December 17, 1986), which provides bookkeeping systems to FCMs and other commodity clients; the Coffee, Sugar & Cocoa Exchange ("CSCE") (December 19, 1986); B.W. Dyer & Company ("Dyer") (December 12, 1986), an FCM primarily engaged inclearing trades for brokers and commercial interests; the Futures Industry Association ("FIA") (January 21, 1987), the national trade association of the futures trading industry; and Shearson Lehman Brothers Inc. ("Shearson") (January 14, 1987), also an FCM. All of the commenters expressed support for the proposed amendment, and certain commenters suggested further amendments to rule § 1.46. The Commission has reviewed each of those comments and, based upon that review and its careful reconsideration of its proposal, is now adopting the new amendment to rule § 1.46 essentially as proposed.

Furthermore, based upon its experience with § 1.46(d)(4) regarding separate accounts of commodity pools, which was adopted approximately three years ago, the Commission believes that any exception to rule § 1.46 for accounts of individuals should be similar to that already adopted for accounts of commodity pools. In this connection, the Commission has adopted slight modifications to the petitioner's suggested amendment intended to provide that symmetrical treatment.

II. Modifications to Petitioner's Suggested Amendment

A. Independence of Trading Strategies

The principal modification which the Commission has made to the petitioner's suggested amendment is to limit the new exception to situations where trading decisions are being made by two or

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[1] Five types of transactions are also exempt from the requirements of paragraphs (a) and (b) of § 1.46, generally: (1) Purchases or sales of commodity options held by commercial interests in the underlying commodity, where such purchases or sales are determined by the contract market to be economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise pursuant to the rules of the contract market which have been adopted in accordance with the requirements of § 1.61(b) (17 CFR 1.61(b) (1987)) and approved by the Commission pursuant to section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982); (2) purchases or sales constituting "bona fide hedging transactions" as defined in § 1.3(z) of the Commission's regulations (17 CFR 1.3(z) (1987)); (3) sales during the delivery period of a futures contract for the purpose of making delivery on the contract during such delivery period if such sales are accompanied by appropriate documentation (*see* § 1.46(d)(3)); (4) purchases or sales made in separate accounts of a commodity pool, provided that the trading for such pool is directed by two or more unaffiliated commodity trading advisors acting independently, each of which is directing the trading of a separate trading account (*see* § 1.46(d)(4)); and (5) purchases or sales made by a leverage transaction merchant constituting cover of its obligations to leverage customers and made in accordance with §§ 31.8(a) and 31.12(b) of the Commission's regulations (17 CFR 31.8(a) and 31.12(b) (1987)) (*see* § 1.46(d)(5)). Purchases or sales closed out during the same day (commonly known as "in-and-out trades" or "day trades") are exempt from the requirements of § 1.46(b) concerning application of an offsetting purchase or sale to the oldest portion of the previously-held short or long position (*see* § 1.46(c)).

more unaffiliated persons. The new exception, therefore, is not applicable to situations where either the account owner himself, or a person directing trading for an account owner, establishes separate accounts to be traded according to "different systems".

The petitioner presented no standards by which an FCM could determine whether trading decisions made by the same person for different accounts had been arrived at independently of all trading decisions made for the other separate account or accounts. The Commission specifically requested that interested commenters set forth with particularity standards to determine whether different trading decisions made by the same person for different accounts have been arrived at independently. However, the commenters who addressed this issue only stated generally that the carrying FCM should be able to rely upon a representation from the person trading the separate accounts, either the account owner or the trading manager, that the trading strategies employed are independent. As the Commission noted when it published the proposed amendment for comment, it disagree with that view.

B. Nonaffiliation Requirement

The petition for rulemaking stated that "the affiliation of a trading manager is irrelevant if he is acting independently of those with whom he is affiliated. Therefore, we think the requirement of nonaffiliation is unnecessary." The Commission stated in its proposal that it believes that an essential element of independent action is nonaffiliation. Accordingly, § 1.46(d)(6)(i) contains a nonaffiliation requirement, essentially similar to the nonaffiliation requirement for different commodity trading advisors ("CTAs"), each of which directs the trading of a separate account of a commodity pool, set forth in § 1.46(d)(4). As the Commission stated when it adopted § 1.46(d)(4), to meet the nonaffiliation requirement neither trader can control the other directly or indirectly, nor can both traders be under the common control, either direct or indirect, of another entity. *See, e.g.*, 17 CFR 1.3(y)(2) (vii) and (viii) (1987).[2] In this connection, the Commission specifically requested comment concerning its view that two APs of the same FCM could not be deemed to be unaffiliated.

Two commenters addressed this issue. One commenter stated that, like the Commission, it believes that independence of the trading strategy should be the governing factor. However, in the commenter's view, control, not affiliation, determines independence. The Commission, in the commenter's view, has failed to articulate why affiliation is such a critical factor in determining independence, a position inconsistent with the Commission's Statement on Aggregation Policy [3] which, for speculative position limit purposes, uses control as the determinative factor.

Concerning whether APs of the same FCM could be deemed nonaffiliated, the commenter stated that if affiliation continues to be a factor in determining whether relief is available, then the APs of the same FCM should be deemed unaffiliated if the following circumstances are present: (1) Each AP has control over one of the accounts (and not the other); (2) each trading decision by one AP is determined wholly independently of the trading decision of the other AP and without consultation with the other AP; and (3) the FCM maintains only such control as is necessary to fulfill its duty to supervise diligently the account under Commission rule § 166.3.[4]

Another commenter stated that the Commission must qualify the reference to "unaffiliated persons" to recognize that a customer may want to participate in an FCM-sponsored trading program in one account and also give trading authority to an AP of that FCM in connection with another account carried at the same FCM. Although the trading decisions would be made independently of each other, the parties with control are "affiliated." The commenter argued that this situation complies with the spirit of the proposal but would be prohibited under the proposed nonaffiliation requirement. This, in the commenter's view, appears to present an unnecessary and unreasonable obstacle to clients who wish to employ the different services offered by an FCM.

The Commission emphasizes that relief under the new exemption is available only where the persons directing the trading of each separate account owned by a customer act independently and such persons are also unaffiliated. As noted above, to qualify as unaffiliated persons neither person can control the other directly or indirectly, nor can both persons be under the common control, either direct or indirect, of another entity. Therefore, two APs of the same FCM who each direct, according to any trading program(s) sponsored by that FCM, the trading of a separate account owned by a customer could not be deemed to be unaffiliated. However, the Commission recognizes that, for the purposes of this exemption, an associated person of an FCM may be deemed an unaffiliated person provided that such associated person (1) is separately registered as a CTA, (2) separately promotes and holds himself out to the public as an independent CTA, (3) directs the trading of a customer account based upon the AP's own independent trading system, and (4) provides a separate disclosure document to the customer as required under § 4.31 of the Commission's regulations.[5] Therefore, and as illustrated by one commenter, a customer may participate in an FCM-sponsored trading program in one account and also give trading authority over a separate account to another AP of the FCM who is also separately registered as a CTA and satisfies the conditions stated above. The dually registered AP/CTA would be deemed, for the purposes of this new amendment, an unaffiliated person. The Commission further notes that a customer may not participate in an FCM-sponsored trading program in more than one account and claim relief under the new amendment adopted herein. For example, a customer may wish to maintain two separate accounts at an FCM each of which is traded according to a separate FCM-sponsored trading program. Although the trading decisions concerning each account would be made independently of each other, the persons directing the trading of each account would be "affiliated" with the carrying FCM.

C. Consolidated Account Statement

The Commission originally proposed to require an FCM to furnish the customer on a quarterly basis with a consolidated account statement for all separate accounts of the customer carried by that FCM if the FCM or one or its APs directs trading for one of the separate accounts.[6] As proposed, the account statement, in the form of a Statement of Income (Loss) and a Statement of Changes in Net Asset

[2] *See* 49 FR 19969 n.5 (May 11, 1984).

[3] Statement of Policy on Aggregation of Accounts and Adoption of Related Reporting Rules, 44 FR 33839 (June 13, 1979).

[4] 17 CFR 166.3 (1987).

[5] 17 CFR 4.31 (1987). This rule generally requires, among other things, that a CTA deliver to a prospective client a disclosure document containing the information specified in that rule. The CTA must provide a disclosure document to a prospective client at or before the time it engages in the solicitation or enters into an agreement with a prospective client to direct the client's commodity interest account.

[6] *See* Proposed rule 1.46(e)(3), 51 FR 37196, 37200.

Value, would set forth essentially the same information required to be furnished by a commodity pool operator ("CPO") under Commission rule § 4.22(a) (1) and (2).[7]

Two commenters, citing operational burdens imposed upon FCMs, objected to this proposed requirement. A third commenter requested that the proposed requirement be amended to allow for monthly consolidated statements. This commenter argued that virtually all FCM accounting systems provide for a monthly processing cycle and could readily be modified to provide for consolidated monthly statements. To provide a quarterly consolidated statement, however, would require considerable additional programming effort. The commenter suggested that the Commission modify its regulation to provide for either quarterly *or* monthly consolidated statements. This commenter also recommended that the Statement of Income (Loss) be amended to specify that consolidated statements be prepared consistent with § 1.33(a). The information required by proposed rule § 1.46(e)(3) is essentially similar to that already required by § 1.33(a). In addition, it would seem adequate and appropriate to provide consistency between the regular monthly statement under § 1.33(a) and the consolidated statement under proposed rule § 1.46(e)(3). Finally, the commenter concluded that to prepare two different statements with different information would unduly burden carrying FCMs.

The Commission, upon further review, has substantially modified this proposal to reflect generally the comments stated above. Section 1.46(e)(2) now provides that if the FCM or one of its APs directs trading for one of the separate accounts, the FCM must furnish the customer a quarterly consolidated statement containing the same information required to be provided under § 1.33(a).[8] Section 1.33 currently requires an FCM promptly to furnish a customer with both a confirmation statement and a monthly statement which shows clearly, *inter alia*, the unrealized net gain or loss on open positions in each separate customer account. In addition, where the trading of an account is directed by a person other than the customer, the customer must still receive a confirmation of each trade, each purchase-and-sale statement and a monthly statement from the FCM, and the FCM also must promptly furnish such statements to the person directing the trading of the account.[9] The Commission wishes to emphasize that an FCM may instead elect to provide such consolidated statements on a monthly basis rather than quarterly if the FCM finds that approach less burdensome.

D. Disclosure Requirements

As the Commission noted in its release, a customer may experience a net loss with respect to such offsetting positions held in separate accounts because of extra fees, commissions and margin requirements. The Commission believes that a customer should be so advised before authorizing an FCM or an AP thereof to direct trading in a separate account. Therefore, the Commission proposed and has adopted a separate disclosure requirement to this effect. Accordingly, § 1.46(e)(1) provides that if an FCM carries the separate accounts of a customer, or if an associated person of such FCM directs trading for one of the separate accounts, the FCM must furnish the customer with a separate written statement. Such written statement must disclose that, if held open, offsetting long and short positions in the separate accounts may result in the charging of additional fees and commissions and the payment of additional margin, although offsetting positions will result in no additional market gain or loss. For current customers, the FCM should attach the separate disclosure to the next monthly statement sent to the customer. For new customers, the FCM may comply with this new requirement merely by attaching this separate disclosure to the risk disclosure statement required to be provided to a customer under § 1.55.[10] The customer's signature on the risk disclosure statement will acknowledge the customer's receipt of the separate disclosure.

Commenters addressing this issue generally were opposed to this additional disclosure requirement. Commenters argued, among other things, that the additional disclosure would neither provide the customer with useful information nor result in increased customer protection. The Commission disagrees with these views and maintains the customers must be fully informed concerning the extra costs which may be incurred from the trading of separate accounts under this new exception which, in turn, may result in no net gain.

III. Other Issues Addressed by Commenters

A. Aggregation of Accounts and Speculative Position Limits

Certain commenters on the proposed amendment to § 1.46 referred to the issue of aggregation of positions, for purposes of the Commission's reporting requirements and speculative limit rules, where the trading of separate accounts owned by a customer is directed by two or more persons acting independently, each of which directs the trading of a separate account. The Commission wishes to note and to remind FCMs that because all of the separate accounts carried by a FCM are owned by single customer, the positions in each separate account must be combined for both reporting and speculative limit purposes. This requirement is consistent with the position adopted by the Commission concerning the aggregation of positions held in the separate, independently managed accounts of a commodity pool.[11] Reports on such separate accounts owned by a customer should be filed by FCMs according to the provisions of Commission rule § 17.00(b),[12] which provides in pertinent part that:

> *Interest in or control of several accounts.* If any person holds or has a financial interest in or controls more than one account, all such acounts shall be considered by the futures commission merchant, clearing member of foreign broker as a single account for the purpose of determining Special Account status and for reporting purposes, *Provided That:* if combining accounts for the purposes of this paragraph would result in reporting the same position more than once, such accounts shall be combined and reported as instructed by the Commission.

The proviso cited above would be applicable where, for example, one of the persons directing trading for a separate account also directs trading for accounts of individual traders carried by the FCM. If such is the case, the FCM should contact the regional office of the Market Surveillance Unit of the Commission's Division of Economic Analysis for instructions on reporting such positions.[13]

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[7] 17 CFR 4.22(a) (1) and (2) (1987).

[8] 17 CFR 1.33(a)(1987).

[9] 17 CFR 1.33(d)(1987). Rule 1.33(d)(3) further provides that the duplicate statements requirements shall not apply to an account controlled by the spouse, parent or child of the customer for whom such account is carried.

[10] *See* 17 CFR 1.55 (1987).

[11] *See* 49 FR 19969, 19971. The Commission also notes that the overall issue of aggregation is under reconsideration.

[12] 17 CFR 17.00(b)(1987). *See also* 17 CFR 18.01(a)(1987).

[13] Concerning the positions to be attributed to an individual trader for reporting and speculative limit purposes, the Commission believes that positions initiated by one trader should not be attributed to

Continued

B. Reporting Open Interest

Certain commenters stated views addressing the reporting of open interest. One commenter noted that rule § 1.46 initially was adopted to prevent persons controlling customer accounts from concealing losses from those customers and to insure accurate reporting of open interest. In this commenter's view, proposed rule § 1.46(d)(6)(i, ii, iv, v, and vi) addresses the problems that rule § 1.46 was designed to prevent. Because long and short positions held in separate accounts controlled by one advisor would be offset, the initial purpose of the rule, to prevent advisors from concealing losses, would still be met. Moreover, where control is held by separate individuals, the requirements of § 1.33 would provide the customer with the protection and information needed concerning the activity in each of those accounts. Finally, this commenter indicated that subparagraph (d)(6)(v) sufficiently addresses issues concerning the accurate reporting and maintenance of open interest because that provision prohibits the transfer of open positions from one account to another when such transfer will result in a liquidation.

Another commenter noted that holding open speculative positions need not distort open interest or large trader statistics. For large trader and open interest reporting purposes, an FCM readily can program its accounting system to net offsetting speculative positions held for the same customer. This result, this commenter argued, is merely an extension of the accounting requirements applicable to hedge accounts carried on an instruct basis under the current regulations.

The Commission previously expressed its concern regarding the accuracy of published open interest calculations in connection with the adoption of an amendment to § 1.46 to provide an additional exception for purchases and sales of commodity futures and commodity option contracts made in separate accounts of a commodity pool where the trading for the commodity pool is directed by two or more unaffiliated CTAs acting independently, each of which is directing the trading of a separate account.[14] Under that exception, trades entered into by separate CTAs acting independently for the account of a commodity pool are offset in an open and competitive manner on or subject to the rules of a contract market and not by means of a "transfer trade," *i.e.*, simply by means of an entry on the books of an FCM for the purpose of transferring existing trades from one account to another carried by the FCM where no change in ownership is involved. Similarly, the Commission believes that to permit the transfer of trades between the separate accounts owned by a customer would cast doubt upon the "independence" of such separate accounts. The Commission also believes that the safeguards contained in this new amendment will ensure that each separate account will accurately reflect the results of trading with respect to such separate account. Furthermore, the Commission recognizes that because each account will be traded separately and offset separately, the amount of open interest reported for any commodity futures contract or commodity option contract traded by two or more separate accounts will be greater than if all open positions in all separate accounts owned by a customer or option customer were offset against each other. However, the Commission believes that any increase in reported open interest will have no adverse impact since all open positions in each separate account must be offset, on or subject to the rules of a contract market, prior to the delivery date of a futures contract or the exercise date of a commodity option contract.[15]

C. Application of Proposed Amendment to New Positions

One commenter noted that neither the **Federal Register** release nor the related rule amendments specifically state that the provision to carry long and short positions for the same customer in the same commodity will apply only to new positions entered into after the effective date of the rule amendment. The commenter noted that, without clarification of this issue, FCMs inadvertently might violate § 1.46 by carrying journal entries on their books identifying the trading of each individual advisor for any particular customer. In this connection, the Commission emphasizes that this new exemption shall apply only to new positions entered into after this amendment becomes effective. This new exemption, when effective, will permit offsetting positions that formerly were required to be closed out, to be held open. Therefore, all offsetting positions entered into prior to the effective date of this new amendment must be closed out according to the requirements of § 1.46.

IV. Suggested Additional Exemptions to Rule 1.46

Several commenters suggested that the proposed amendment to rule § 1.46 be expanded to encompass other situations not addressed in the Commission's proposal. One commenter referred to the liquidation of open offsetting positions held in separate accounts owned by a customer. This commenter stated that because § 1.46 generally prescribes that the oldest open position be offset, this sequence of offset is not necessarily the most favorable to the customer. Because FCMs frequently charge a lower commission on positions which are established and closed out on a spread basis, it is often in the customer's interest to close out a spread position against another spread position which is not the oldest position in the account. In this connection, the commenter recommended that the Commission further amend § 1.46 to require that positions be offset "systematically." It should be sufficient, the commenter contended, to prohibit a systematic offsetting algorithm which intentionally offsets the most profitable trades first without disclosing that fact to the customer. FCMs would then be free to apply spread commission rates to customers regardless of whether the positions to be offset are the oldest positions.

Another commenter suggested that the Commission require that offsetting positions be liquidated prior to the notice period. This commenter noted that for commodities like cocoa and coffee that have multiple notice and delivery days, the potential for abuse of the proposed rule amendment is higher than in normal trading times. As the notice period approaches, many traders watch open interest closely and compare it to evident supply to gauge market conditions. For example, the commenter argued, assume that two offsetting accounts claimed independence and were reporting on a gross basis under the proposed amendment. It is possible that the offsetting positions may have been established to inflate open interest without bearing risk. If notices were stopped by the long side and reissued by the short, this presumably would be

another trader provided the traders are acting independently, are not affiliated, and are not trading in concert with each other. *See* 17 CFR 18.01 (b) and (c)(1987).

[14] *See* 17 CFR 1.46 (d)(4) (iv) and (v) (1987); *see also* 49 FR 19969, 19970 (May 11, 1984).

[15] The Commission wishes to note, however, that if the FCM carrying the separate accounts sought the protection of the bankruptcy laws, the Commission might, in appropriate cases and upon application by the trustee or the affected clearing organization, permit offsetting open contracts to be liquidated, or settlement on such contracts to be made, by transfer trades. 17 CFR 190.09(d) (1987).

strong evidence that a violation of the rule had occurred. However, severe disruption to the market may have already occurred. The commenter further stated that all such offsetting positions should be liquidated prior to the notice period. There are already exemptions for bona fide hedging positions in § 1.46 to protect the interests of commercial parties participating in the delivery. There is no reason to expand those exemptions to non-commercials in the notice period. The potential for abuse is strong and the cost in terms of disruption is high.

On the basis of the comments received, and upon its own reconsideration of the matter, the Commission is not prepared to make any further exemptions to § 1.46 at this time. As stated above, the Commission will monitor carefully those taking advantage of the new exemptions to the general requirements of § 1.46. If the Commission believes that any adjustments to the new exemption are necessary, or if it believes that additional exemptions are appropriate, further rulemaking proceedings will be initiated.

V. Related Matters

A. Paperwork Reduction Act

There are no information collection requirements under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) contained in § 1.46. The Commission has notified the Office of Management and Budget of the amendments contained in this release.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The direct impact of this amendment to rule § 1.46 affects FCMs, which have the obligation generally to close out offsetting positions and issue a purchase-and-sale statement. The Commission has previously determined that futures commission merchants should not be considered small entities for purposes of the RFA. Specifically, the Commission found that with respect to FCMs, based upon the fiduciary nature of FMC/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FMCs should be excluded from the definition of a small entity.[16] Accordingly, the requirements of the RFA do not apply to FCMs. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that this rule amendment will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 1

Offsetting positions, Close-out requirements, Futures commission merchants, Commodity trading advisors, Commodity futures.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4g, 5 and 8a of the Act, 7 U.S.C. 6g, 7 and 12a (1982), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 9, 12, 12a, 12c, 13a, 13a-1, 13a-2, 16, 19, 21, 23 and 24; 5 U.S.C. 552 and 552b, unless otherwise noted.

2. Section 1.46 is amended by adding a new paragraph (d)(6) and a new paragraph (e) to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

* * * * *

(d) *Exceptions.* The provisions of this section shall not apply to:

* * * * *

(6) Purchases or sales made in separate accounts owned by a customer or option customer, *Provided that:*

(i) Each person directing trading for one of the separate accounts is unaffiliated with and acts independently from each other person directing trading for a separate account;

(ii) Each person directing trading for one of the separate accounts, unless he is the account owner himself, does so pursuant to a power of attorney signed and dated by the customer, and which includes, at a minimum, the name, address and telephone number of the person directing trading and the account number over which such power is granted;

(iii) Each trading decision made for each separate account is determined independently of all trading decisions made for the other separate account or accounts;

(iv) The purchases and sales for such accounts are executed by open and competitive means on or subject to the rules of a contract market;

(v) No position held for or on behalf of separate accounts traded in accordance with paragraphs (d)(6)(j), (d)(6)(ii), (d)(6)(iii) and (d)(6)(iv) of this section may be closed out by transferring such an open position from one of the separate accounts to another of such accounts; and

(vi) The customer or option customer and each person directing trading for the customer or option customer provides the futures commission merchant with written confirmation that the trading and the operation of the customer's or option customer's accounts will be in accordance with paragraphs (d)(6)(i), (d)(6)(ii), (d)(6)(iii), (d)(6)(iv) and (d)(6)(v) of this section. The written confirmation must be signed and dated, and received by the futures commission merchant before it can avail itself of the exception provided by this paragraph.

(e) With respect to the exception from the provisions of this section set forth in paragraph (d)(6) of this section, if a futures commission merchant that carries the separate accounts of a customer or option customer, or if an associated person of such futures commission merchant, directs trading for one of the separate accounts:

(1) The futures commission merchant must first furnish the customer or option customer with a written statement disclosing that, if held open, offsetting long and short positions in the separate accounts may result in the charging of additional fees and commissions and the payment of additional margin, although offsetting positions will result in no additional market gain or loss. Such written statement shall be attached to the risk disclosure statement required to be provided to a customer or option customer under § 1.55 on this part; and

(2) The futures commission merchant must prepare and furnish to the customer or option customer quarterly, a consolidated account statement for all separate accounts of the customer or option customer carried by the futures commission merchant. The consolidated account statement shall contain the

[16] *See* 47 FR 18618, 18619 (Apr. 30, 1982).

same information required to be furnished to a customer or option customer under § 1.33(a) of this part.

Issued in Washington, DC, on January 5, 1988, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-380 Filed 1-8-88; 8:45 am]

BILLING CODE 6351-01-M

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17 CFR Part 1

Activities of Self-Regulatory Organization Governing Members Who Possess Material, Non-Public Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule; Correction.

SUMMARY: This notice corrects three errors which appeared in the **Federal Register** on December 29, 1987 (52 FR 48974).

FOR FURTHER INFORMATION CONTACT: De'Ana Hamilton-Brown, Division of Trading and Markets, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

The corrections to be made are as follows:

1. On page 48974, third column, line 37, the cite should read 51 FR 44866, 44868 (December 12, 1986).
2. On page 48974, third column, line 63, the cite should read 51 FR at 44868.
3. On page 48977, first column, under the List of Subjects, change SROS to Self-Regulatory Organizations.

Dated: January 5, 1988.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-381 Filed 1-8-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Calculation of Interest.

SUMMARY: The Tax Reform Act of 1986 established a new method of determining the adjusted rate of interest on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term Federal rate and is adjusted quarterly. This notice advises the public that the interest rates, as set by the Internal Revenue Service, will be 11 percent for underpayments and 10 percent for overpayments for the quarter beginning January 1, 1988. It is being published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Robert B. Hamilton, Jr., Revenue Branch, National Finance Center, U.S. Customs Service, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278 (317) 298-1245.

SUPPLEMENTARY INFORMATION:

Background

By notice published in the **Federal Register** on January 5, 1987 (52 FR 255), Customs advised the public that the Tax Reform Act of 1986 (Pub. L. 99-514), amended 26 U.S.C. 6621, mandating a new method of determining the interest rate paid on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term Federal rate. As amended, 26 U.S.C. 6621 provides that the interest rate that Treasury pays on overpayment will be the short-term Federal rate plus 2 percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus 3 percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less and are to fluctuate quarterly. The rates are determined during the first month of a calendar quarter and become effective for the following quarter.

Determination

It has been determined that the rates of interest for the period of January 1, 1988-March 31, 1988 are 11 percent for underpayments and 10 percent for overpayments. These rates will remain in effect through March 31, 1988, and are subject to change on April 1, 1988. They will remain in effect until changed by another notice in the **Federal Register.**

Dated: January 5, 1988.

Michael H. Lane,

(Acting) Commissioner of Customs.

[FR Doc. 88-398 Filed 1-8-88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 221 and 236

[Docket No. R-88-1368; FR-2418]

Low Cost and Moderate Income Mortgage Insurance

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule makes a technical correction in 24 CFR 221.524(a)(1)(ii) and 24 CFR 236.30(a)(1)(i).

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the session-day waiting period. Whether or not the statutory waiting period has expired, this rule will not become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500, telephone (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The phrase "the provisions of § 5.1 *et seq.* of this title" is an erroneous citation contained in §§ 221.524(a)(1)(ii) and 236.30(a)(1)(i). The correct reference is to 24 CFR Part 215.

Since this final rule only corrects the erroneous citation, the Department believes it is unnecessary to solicit public comment before publication of this rule for effect.

The technical correction is an internal administrative procedure that 24 CFR 50.20 excludes from the requirements of 24 CFR Part 50—the HUD rules implementing section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

This rule is not a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations, issued by the President on February 17, 1981.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this technical rule would have no economic impact on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 221

Condominiums, low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 236

Low and Moderate income housing, Mortgage insurance, Rent subsidies, Taxes, Utilities Project.

Accordingly, the Department amends 24 CFR Part 221 and 24 CFR Part 236 as follows:

PART 221—LOW COST AND MODERATE MORTGAGE INSURANCE

1. The authority citation for 24 CFR Part 221 continues to read as follows:

Authority: Secs. 211 and 221, National Housing Act (12 U.S.C. 1715b, 1715l); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 221.524 [Amended]

2. In § 221.524(a)(1)(ii), the phrase "the provisions of § 5.1 *et seq.* of this title" is removed and the phrase "Part 215 of this title" is substituted in its place.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

3. The authority citation for 24 CFR Part 236 continues to read as follows:

Authority: Secs. 211 and 236 of the National Housing Act (12 U.S.C. 1715b and 1715z–1); sec. 7(d), Department of Housing and Urban Department Act (42 U.S.C. 3535(d)).

§ 236.30 [Amended]

4. In § 236.30(a)(1)(i), the phrase "the provisions of § 5.1 *et seq.* of this title" is removed and the phrase "Part 215 of this title" is substituted in its place.

Dated: December 17, 1987.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88–400 Filed 1–8–88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 88-001]

Ice Navigation Season

AGENCY: Coast Guard, DOT.

ACTION: Notice of ice navigation season.

SUMMARY: The Ice Navigation Season Regulated Navigation Area (RNA) on the Northern portion of the Chesapeake Bay and its tributaries, including the Chesapeake and Delaware Canal, will be placed in effect on 6 January 1988. The regulations for this Regulated Navigation Area, found in 33 CFR 165.503, published in the **Federal Register** May 19, 1983 (48 FR 22543), state that they are placed in effect and terminated at the direction of the Captain of the Port Baltimore, MD by notice in the **Federal Register.** The purpose of this Regulated Navigation Area is to enhance the safety of navigation in the affected waters. It requires operators of certain vessels to be aware, during their vessel's transit of the Regulated Navigation Area, of currently effective Ice Navigation Season Captain of the Port Orders issued by the Captain of the Port, Baltimore, Maryland.

EFFECTIVE DATE: 9 a.m., 6 January 1988.

FOR FURTHER INFORMATION CONTRACT: Commander Lane I. McClelland, Chief, Port Operations Department, USCG Marine Safety Office, Custom House, 40 South Gay Street, Baltimore, Maryland 21202–4022, (301) 962–5105.

Dated: January 5, 1988.

J. H. Parent,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 88–442 Filed 1–8–88; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Effective Date of VEAP Disenrollment and Other Technical Changes

AGENCIES: Veterans Administration and Department of Defense.

ACTION: Final regulations.

SUMMARY: This regulatory amendment permits a veteran who has received a refund of his or her contributions to the Post-Vietnam Era Veterans Educational Assistance Program (VEAP) fund to retain his or her eligibility if the refund check is returned to the Veterans Administration (VA). The regulation previously stated that such a person is disenrolled from VEAP on the date the VA received his or her request for a refund. Hence, he or she had lost eligibility by the time of receipt of the refund check. This amendment is the result of many attempts by veterans to return their refund checks, and will result in the VA's treating these veterans in a manner similar to veterans in other programs administered by the VA.

Besides the substantive proposal, the VA and the Department of Defense have made several technical amendments which are necessary to correct erroneous cross-references.

EFFECTIVE DATE: November 3, 1987.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 18399 and 18400 of the **Federal Register** of May 15, 1987, there was published a notice of proposed rulemaking to 38 CFR Part 21 which would permit a veteran to retain eligibility for benefits under VEAP if he or she returned the refund check. Interested persons were given 30 days to submit comments, suggestions or objections. The VA and the Department of Defense received one letter from a university official containing two suggestions.

The first suggestion was that the regulation should state that the veteran would retain eligibility even if he or she had negotiated the refund check provided that the veteran returned the amount of the check. In essence, this suggestion, if adopted, would have permitted an individual, not on active duty, to reenroll in VEAP, and to make a contribution to the fund. The VA and the Department of Defense after a careful review of the pertinent statute have concluded that they do not have the legal authority to accept this suggestion.

The law does not contain a specific statement concerning the suggestion. The agencies reached their conclusion in the following manner:

First, it is clear that a participant who has received a refund check representing the amount of his or her contributions to the fund, and has negotiated that check, has disenrolled from VEAP. That money is the participant's to do with what he or she wills.

Second, it is equally clear that the law (38 U.S.C. 1621(e)) permits a participant to reenroll following a disenrollment. However, once the participant has done so, the law requires either that the participant authorize a monthly deduction from his or her military pay to be contributed to the fund (38 U.S.C. 1622(a)), or that the participant, while still on active duty, make a lump-sum payment to the fund (38 U.S.C. 1622(d)). Since a veteran does not receive military pay and is not on active duty, it is impossible for him or her to make the legally required contribution. Hence, the suggestion cannot be accepted.

The second suggestion was that the final regulation should make clear that a veteran who returns a refund check should remain continuously eligible for benefits under VEAP. The VA and the Department of Defense have always intended that this be so. Since it is apparently not clear to the readers of the regulation, the final regulation has been changed slightly from the proposal so that there can be no mistake.

The VA and the Department of Defense have determined that these final regulatory amendments do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The final regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs and the Secretary of Defense have certified that these final regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the final regulatory amendments, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 503 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations, and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 3, 1987.

Thomas K. Turnage,

Administrator.

Approved: December 2, 1987.

A. Lukeman,

Lieutenant General, USMC Deputy Assistant Secretary (Military Manpower & Personnel Policy).

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—[AMENDED]

1. In § 21.5001, paragraph (c) is revised to read as follows:

§ 21.5001 Administration of benefits program; Chapter 32.

* * * * *

(c) Section 21.4003 (except paragraphs (d) and (e))—Revision of Decisions.

(Authority: 38 U.S.C. 1641)

* * * * *

2. In § 21.5052, paragraph (e) is revised to read as follows:

§ 21.5052 Contribution requirements.

* * * * *

(e) *Prohibition against contributing.* An individual may not make contributions to the fund after the date of his or her discharge. The VA does not consider the return of an unnegotiated refund check to be a contribution. A person who returns a refund check remains continuously eligible for benefits.

(Authority: 38 U.S.C. 1622)

* * * * *

3. In § 21.5062, paragraph (b) is revised to read as follows:

§ 21.5062 Date of disenrollment.

* * * * *

(b) The date the individual negotiates the check which represents a refund of his or her remaining contributions to the fund, whichever is earlier.

(Authority: 38 U.S.C. 1621(d))

4. In § 21.5130, paragraphs (a), (b), and (d) are revised and paragraph (h) is added to read as follows:

§ 21.5130 Payments—educational assistance allowance.

* * * * *

(a) Section 21.4131 (except paragraphs (c)(3), (e) and (h))—Commencing dates.

(b) Section 21.4133—Notification of suspension or discontinuance.

(Authority: 38 U.S.C. 1641)

* * * * *

(d) Section 21.4135 (except paragraphs (b), (c), (d), (m), (o), and (v))—Discontinuance dates.

(Authority: 38 U.S.C. 1641)

* * * * *

(h) Section 21.4136(k) (except paragraph (k)(3))—Mitigating circumstances.

(Authority: 38 U.S.C. 1641, 1780(a))

5. In § 21.5131, the introductory text is revised to read as follows:

§ 21.5131 Educational assistance allowance.

The Veterans Administration will pay educational assistance allowance at the rate specified in §§ 21.5136 and 21.5138 while the individual is pursuing a course of education. The Veterans Administration will make no payment for training in any course if the training is not part of the veteran's program of education. The Veterans Administration may withhold final payment until it receives proof of the individual's continued enrollment and adjusts the individual's account.

* * * * *

(Authority: 38 U.S.C. 1641)

[FR Doc. 88–420 Filed 1–8–88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 661

Buy America Requirements

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This document amends the regulations implementing the "Buy America" provision of the Surface Transportation Assistance Act of 1982 by amending the reference for general waivers to the requirements set forth in Appendix A of § 661.7. The amendment is necessary because the existing referenced listing has been republished in a new part in the Code of Federal Regulations.

EFFECTIVE DATE: This amendment is effective January 11, 1988.

FOR FURTHER INFORMATION CONTACT: Edward J. Gill, Jr., Office of the Chief Counsel, Room 9316, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4063.

SUPPLEMENTARY INFORMATION: Section 165(b)(2) of the Surface Transportation Assistance Act of 1982 provides that the general domestic preference requirements set forth in section 165(a) will not apply if the item or material that is being procured utilizing UMTA funds is not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The regulations which implement section 165(b)(2) (49 CFR 661.7) contain an Appendix which sets out General Exceptions granted under section 165(b)(2). One of the general exceptions incorporates all waivers which establish excepted articles, materials, and supplies for the Buy American Act of 1933 (41 U.S.C. 10a–d). These waivers had previously been published in Title 41 of the Code of Federal Regulations. They are now published in Title 48 of the Code of Federal Regulations.

The purpose of this amendment is to revise Appendix A to reflect the correct reference to Title 48.

Pursuant to an exception under the Administrative Procedure Act, 5 U.S.C. 553(b), UMTA finds that notice and public comment are unnecessary to the public interest in this instance. The general waiver that was granted in 1983 is not being revised. The only action that UMTA is taking is to substitute the correct citation to the waivers in question.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. This regulation is not significant under the Department's Regulatory Policies and Procedures. UMTA finds that the economic impact of this regulation is so minimal that a full regulatory evaluation is not required.

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354, UMTA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

This amendment does not impose any requirements that are subject to the Paperwork Reduction Act, Pub. L. 96–511.

List of Subjects in 49 CFR Part 661

Buy America, Domestic preference, Contracts, Grant programs, Transportation, Mass transportation.

Accordingly, Part 661 of Title 49 of the Code of Federal Regulations is amended as follows:

PART 661—[AMENDED]

1. The authority citation for Part 661 is revised to read as follows:

Authority: Section 165, Pub. L. 97–424; section 337, Pub. L. 100–17; 49 CFR 1.51.

2. Appendix A to § 661.7 is revised to read as follows:

Appendix A—General Exceptions

(a) All waivers published in 48 CFR 25.108 which establish excepted articles, materials, and supplies for the Buy American Act of 1933 (41 U.S.C. 10a–d), as the waivers may be amended from time to time, are applicable to this part under the provisions of § 661.7 (b) and (c).

Dated: January 6, 1988.

Alfred A. DelliBovi,

Deputy Administrator.

[FR Doc. 88–441 Filed 1–8–88; 8:45 am]

BILLING CODE 4910-57-M

Proposed Rules

Federal Register
Vol. 53, No. 6
Monday, January 11, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-ASW-37]

Proposed Revision of Transition Area; Dalhart, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Dalhart, TX. The development of a new standard instrument approach procedure (SIAP) to Runway 35 at the Dalhart Municipal Airport utilizing the Dalhart Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC) has made this proposed revision necessary. The intended effect of this proposed revision is to provide adequate controlled airspace for aircraft executing this new SIAP.

DATE: Comments must be received on or before February 5, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87-ASW-37, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASW-37." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Region Counsel, 4400 Blue Mound Road, Forth Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Dalhart, TX. The development of a new SIAP to Runway 35 at the Dalhart Municipal Airport has necessitated this proposed revision. This proposed revision would increase the existing transition area by one-half mile and would add a 4-mile wide arrival extenstion south of the airport. The existing 4-mile wide arrival extension north of the airport would remain unchanged. This intended effect of this revision is to provide adquate controlled airspace for aircraft executing this new SIAP. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, is it certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexability act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Dalhart, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the Dalhart Muncipal Airport (latitude 36°01'18"n., longtitude 102°32'52"W.), within 2 miles each side of the 002° radial of the Dalhart VORTAC (latitude 36°05'39"N., longitude 102°32'39"W.) extending from the 9.5-mile radius area to 12 miles north of the airport; and within 2 miles each side of the 181° radial of the Dalhart VORTAC extending from the 9.5-mile radius area to 14.5 miles south of the airport.

Issued in Fort Worth, TX on December 18, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-372 Filed 1-8-88; 8:45 am]

BILLING CODE 4910-13-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Determination of Delimiting Date

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendment.

SUMMARY: On December 31, 1979, the Veterans Administration (VA) liberalized the regulation containing the criteria used by the VA in determining whether the character of service of a veteran who received an other than honorable discharge was under other than dishonorable conditions. Before this liberalization the regulation (38 CFR 3.12(d)) held that a discharge or release from active service because of homosexual acts will be considered to have been issued under dishonorable conditions. The liberalized regulation now provides that a discharge issued because of homosexual acts involving aggravated circumstances or other factors affecting performance of duty must be considered to have been issued under dishonorable conditions. Hence, discharges of many veterans which would have been considered to have been issued under dishonorable conditions before December 31, 1979, are now not considered to have been issued under dishonorable conditions. This proposal would amend the regulation used to determine the ending date of a veteran's eligibility under the Vietnam Era GI Bill to state how to determine the ending date of eligibility for a veteran who is favorably affected by the liberalization.

DATES: Comments must be received on or before February 10, 1988. Comments will be available for public inspection until February 22, 1988.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until February 22, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2092.

SUPPLEMENTARY INFORMATION: This proposal contains an amendment to 38 CFR 21.1042 which will help the users of regulations determine the ending date of eligibility (delimiting date) for a veteran who was favorably affected by the liberalization of 38 CFR 3.12(d) concerning the commission of homosexual acts while the veteran was on active duty. It has been the VA's administrative experience that relying upon the users of regulations to apply 38 CFR 3.12(d) to education claims results in widely varying calculations of veterans' delimiting dates even when the circumstances of the veterans' active duty service are the same. The amendment to 38 CFR 21.1042 will assure uniform administration of this education program.

The VA has determined that this proposed regulatory amendment does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The proposed regulatory amendment will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The Administrator of Veterans Affairs has certified that this proposed regulatory amendment, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the proposed regulatory amendment, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because the proposed regulatory amendment affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdications.

The Catalog of Federal Domestic Assistance number for the program affected by this proposed regulatory amendment is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 14, 1987.

Thomas K. Turnage,

Administrator.

PART 21—[AMENDED]

In 38 CFR Part 21, Vocational Rehabilitation and Education, § 21.1042 is amended by adding paragraph (e)(4) to read as follows:

§ 21.1042 Ending dates of eligibility.

* * * * *

(e) *Eligibility established after the VA determines the character of the discharge.*

* * * * *

(4) If the veteran was discharged before December 31, 1979, and due to the veteran's commission of homosexual acts while on active duty, his or her discharge is considered to have been under dishonorable conditions pursuant to § 3.12 of this chapter as that section was written and interpreted on the date of his or her discharge, but is considered to have been under other than dishonorable conditions pursuant to § 3.12 of this chapter as that section was written and interpreted after December 30, 1979, educational assistance may be afforded the veteran through December 31, 1989.

(Authority: 38 U.S.C. 1662, 3103)

* * * * *

[FR Doc. 88-421 Filed 1-8-88; 8:45 am]

BILLING CODE 8320-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201

FIRMR Improvement Project

AGENCY: Information Resources Management Service, GSA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice solicits comments regarding a major GSA initiative to reorganize and rewrite the Federal Information Resources Management Regulation (FIRMR). Known as the FIRMR Improvement Project (FIP), this initiative began in response to user

community recommendations to make the FIRMR more useful and readable. Planned changes to the FIRMR include: the separation of policies and procedures, the separation of contracting provisions from management and use provisions, the reorganization of FIRMR contracting provisions for consistency with the Federal Acquisition Regulation (FAR) structure, and the reorganization of the FIRMR's management and use provisions into a logical life-cycle format.

DATE: Comments must be submitted on or before March 11, 1988.

ADDRESS: Comments should be addressed to: General Services Administration (KMPR), Project KMP-88-30, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: David Mullins, Patricia Phillips, John Stewart or Paul Whitson, Policy Branch (KMPP), Office of Information Resources Management Policy, telephone 202 535-7462 or FTS 535-7462.

SUPPLEMENTARY INFORMATION: The revised FIRMR will address Federal Information Resources Management issues only to the extent that GSA has authority in those areas. Its text will be as concise, understandable and easy to use as possible. Cross references and redundancies will be kept to a minimum.

The proposed FIRMR organizational structure is as follows:

Preface—How to Use the FIRMR
Subchapter A—General (e.g., overview, definitions, goals, and policies)
Subchapter B—Management and Use of Information (Records)
Subchapter C—Management and Use of Federal Information Processing and Related Resources
Subchapter D—Management and Use of non-Automated Information Processing Resources
Subchapter E—Acquisition of Federal Information Processing Resources
Appendix A—Temporary Regulations
Appendix B—Bulletins
Appendix C—List of Current Issuances
Appendix E—Illustration of Forms
Appendix I—Index

Bulletins will contain detailed procedures about GSA policies and programs in the FIRMR, whereas the Index will contain the location in the FIRMR of key terms and phrases.

As the final draft of each subchapter is completed, GSA will seek public comment on the subchapter through a notice of proposed rulemaking in the **Federal Register**. Because there is a pressing need for Subchapter E by the contracting community, it will be completed first and issued for public comment in July 1988. Subchapter C should be issued in January 1989. The remaining subchapters should be issued for comment in June 1989 along with the revised Subchapters E and C. This approach will provide agencies the opportunity to review the FIRMR in its entirety. GSA may deviate from this plan and issue Subchapter E as a final FIRMR amendment as soon as public comments on it are reconciled. The attempt to issue Subchapter E in advance of the remainder of the revised FIRMR is driven by need but may be restricted by its overlap with the current FIRMR.

List of Subjects in 41 CFR Ch. 201

Information resources.

Authority: The Administrator of GSA's authority to prescribe regulations is found in 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783-345; 40 U.S.C. 751(f).

Dated: December 16, 1987.

Fred L. Sims,

Assistant Commissioner for Information Resources Management Policy.

[FR Doc. 88-377 Filed 1-8-88; 8:45 am]

BILLING CODE 6820-25-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 80, 82 and 83

Federal Crime Insurance Program; Residential and Commercial Rates

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed Rule.

SUMMARY: This proposed rule increases the Federal Crime Insurance Program (FCIP) rates which apply to both residential and commercial properties located in eligible states. It also authorizes a premium discount on commercial burglary and robbery insurance policies in the form of credits for installation of hold up buttons and alarms protecting safes, and for commercial policies covering robbery away from the premises when the insured has demonstrated that he has entered into a contract with a bonded armored car service for transporting cash from the insured premises to a bank.

DATE: All comments received on or before March 11, 1988, will be considered before final action is taken.

ADDRESS: Persons wishing to comment should submit comments in duplicate to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Washington, DC 20472. Telephone number: (202) 646-4107.

FOR FURTHER INFORMATION CONTACT: Robert J. DeHenzel, Federal Emergency Management Agency, Federal Insurance Administration, Donohoe Building, 500 C Street, SW., Room 433, Washington, DC 20472, Telephone number (202) 646-3440.

SUPPLEMENTARY INFORMATION: These amendments to the Federal Crime Insurance Program Regulations are the result of the experience gained over the past 17 years the Program has been in operation and the Federal Insurance Administration's continued desire to improve service to policyholders and to more closely align the Program with the underwriting and rating methods used by the private insurance sector, while reducing the general taxpayers' burden with more equitable sharing of the cost of crime losses between the general taxpayers and the program insureds.

In order to achieve these goals, the Federal Insurance Administration began in 1981 a 5 year program to reduce the taxpayer subsidy by instituting changes such as rate increases, coverage changes, higher deductibles, and increasing the extent of protective device requirements with which an insured would be required to comply as a condition of new or continued eligibility for crime insurance.

More specifically, the following changes in the Program operation were implemented: (1) In 1982: raised the premiums and deductibles for both residential and commercial policies; discontinued the use of geographical territories for determining premiums; (2) 1983-1984: revised the definitions under the residential policy to clarify Program intent in recognition of the improving residential loss ratio by increasing the limit of the insurer's liability for loss of money from $100 to $200, and modified provisions dealing with the loss of jewelry, including, without limitation, watches, necklaces, bracelets of gold, silver or platinum, and with the losses of flatware and holloware, gold, fine arts, antiques, coin or stamp collections to increase coverage from $500 to $1,500 in the aggregate per occurrence; (3) 1985: revised the method by which commercial crime insurance policies were rated, making the rating of policies easier for producers to understand and reducing rating errors. The new plan also provided for an overall increase in the commercial crime insurance rates and for a premium discount (credit) by offering loss prevention incentives to businesses that utilize preventive measures such as central station alarms with guard response at the time of loss.

The overall rate impact on the Program was less than 10%; (4) 1987: revised the classification of risk and alarm requirements of the commercial rating plan.

This change in 1987 was promulgated by the Administrator following an analysis of both the frequency and severity of losses, especially as to particular types of business, and will result in an overall revenue increase of approximately 10% of the inforce business over a 12 month period.

In spite of the above revisions, the Federal Crime Insurance Program is sustaining underwriting losses and program expenses that will require an approximate subsidy of 13 million dollars. In order to achieve a self-sustaining status, the Federal Insurance Administration would, therefore, need to impose an overall rate increase of approximately 145% to offset the higher-than-average industry expenses associated with administering the Program. However, inasmuch as the enabling legislation that authorized the Program requires that crime insurance be made available at affordable rates, the Federal Insurance Administration has maintained an ongoing study of the rating of crime insurance coverages provided by the voluntary insurance market.

In this regard, recent rating values analysis for the Federal Insurance Administration performed by the actuarial firm of Tillinghast, Nelson & Warren, Inc., indicates that an overall commercial burglary rate increase for federal crime insurance is appropriate, based upon the rate increases that have occurred in the private market. The Tillinghast report notes that since their last rate comparison in 1983, Insurance Services Office (ISO) has had five rounds of rate level increases on a country-wide basis, and that while the upward moves in ISO advisory rates have not been dramatic, the FCIP rate increases have generally fallen behind those of the voluntary marketplace. For example, using a hypothetical FCIP average risk of $12,000 burglary coverage, $7,500 robbery coverage and $250,000 gross receipts, the rate relatively between FCIP rates and ISO rates in Los Angeles, California, Miami, Florida, and Brooklyn, New York are as follows:

Class	FCIP rates	ISO rate	Relativity
Los Angeles: Burglary—Drug Store	$782	$1,244.59	1.592
Los Angeles: Robbery	895	1,510.59	1.69
Miami: Burglary—Drug Store	782	1,259.03	1.610
Miami: Robbery	895	813.24	0.91
Brooklyn: Burglary—Drug Store	782	2,757.63	3.526
Brooklyn: Robbery	895	2,188.64	2.45

While it is the Administration's goal, within the statutory limitations prescribed by the Congress, to make the Federal Crime Insurance Program self-sustaining, and recent studies comparing FCIP and ISO rates indicate a substantial rate increase is appropriate, only a 5% increase is being proposed for Fiscal Year 1988. This action is in keeping with Congressional intent that rate increases be limited. However, in order to continue the Federal Insurance Administration's successful efforts to help insureds protect themselves more effectively, the FIA is proposing additional economic incentives to businesses by providing premium credits for the installation of safe burglary alarm systems; holdup alarm systems; and contracts with a bonded armored car service for transporting cash receipts from the insured premises to a bank.

FEMA has determined that an environmental impact statement is not needed for this proposed rule. A copy of the finding of no significant impact and an environmental assessment is available at the above address.

FEMA has also determined that this rule will not have a significant economic impact on a substantial number of small entities, and so has not conducted a regulatory flexibility analysis.

This proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and hence no regulatory analysis has been prepared. FEMA has determined that this final rule does not contain a collection of information requirements as described in section 3504(b) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 80, 82 and 83

Federal Crime Insurance Program.

Accordingly, 44 CFR Parts 80, 82 and 83 are amended as follows:

PART 80—DESCRIPTION OF PROGRAM AND OFFER TO AGENTS

1. The authority citation for Part 80 continues to read as follows:

Authority: 12 U.S.C. 1749bbb-17 et seq; Reorganization Plan No. 3. of 1978; EO 12127.

2. Section 80.1(a)(6) is revised to read as follows:

§ 80.1 Definitions.

(a) * * *

(6) "Discounts" The premium credit issued to a residential or business insured protected by a burglar alarm system, or other protective devices or methods used to mitigate losses and considered adequate by the Administration for the type of risk involved, such as protective armored car services.

* * * * *

PART 82—PROTECTIVE DEVICE REQUIREMENTS

1. The authority citation for Part 82 continues to read as follows:

Authority: 12 U.S.C. 1749bbb et seq; Reorganization Plan No. 3 of 1978; EO 12127.

2. Section 82.1 is amended by redesignating paragraphs (h), (i), (j) and (k) as paragraphs (i), (j), (k) and (l), and adding new paragraphs (h) and (m) to read as follows:

§ 82.1 Definitions.

* * * * *

(h) "Holdup alarm" means a holdup alarm system that is constantly in operation and signals at an office of law enforcement authorities or at an office of an independent agency located away from the protected property. Accessible, but inconspicuous, buttons at hand or foot or knee levels are placed throughout the premises. An insured may, at his option, cause the alarm to sound on the premises, in addition to the remote location.

* * * * *

(m) "Safe or vault alarm" means a safe or vault protected by a central station or silent alarm supervised system.

PART 83—COVERAGE RATES AND PRESCRIBED POLICY FORMS

1. The authority citation for Part 83 continues to read as follows:

Authority: 12 U.S.C. 1749bbb et seq; Reorganization Plan No. 3 of 1978; E.O. 12127.

2. Section 83.4 is revised to read as follows:

§ 83.4 Residential crime insurance rates.

The specific limits of coverage for applicable annual premiums for residential crime insurance coverage are revised to read as follows:

Policy limits	Annual premium
$1,000	$32
2,000	42
3,000	52
4,000	62
5,000	74
6,000	84
7,000	94
8,000	104

Policy limits	Annual premium
9,000	116
10,000	126

3. Section 83.25 (e) and (f) are revised to read as follows:

§ 83.25 Commercial crime insurance rates.

* * * * *

(e) The following tables shall be used to determine rates for commercial risks.

Amount of insurance	Gross Receipts											
	Less than $100,000		$100,000 to $199,999		$200,000 to $299,999		$300,000 to $499,999		$500,000 to $999,999		$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
Class 1												
$1,000	$82	$112	$124	$168	$124	$168	$164	$222	$204	$276	$326	$442
$2,000	156	200	234	298	234	298	310	396	386	496	618	794
$3,000	228	288	342	430	342	430	456	574	570	716	912	1144
$4,000	296	366	446	548	446	548	594	730	742	912	1184	1458
$5,000	350	414	528	622	528	622	702	828	876	1034	1402	1652
$6,000	370	454	554	680	554	680	740	908	924	1132	1476	1810
$7,000	384	484	576	724	576	724	768	966	958	1206	1534	1928
$8,000	400	512	596	768	596	768	796	1022	994	1276	1590	2046
$9,000	404	522	604	784	604	784	804	1044	1004	1302	1606	2084
$10,000	412	542	618	812	618	812	824	1082	1026	1350	1644	2160
$11,000	434	590	654	886	654	886	870	1180	1086	1474	1738	2358
$12,000	454	630	680	946	680	946	908	1258	1132	1570	1812	2514
$13,000	464	648	696	974	696	974	926	1298	1156	1620	1850	2592
$14,000	468	660	702	990	702	990	934	1318	1168	1644	1870	2632
$15,000	472	668	710	1004	710	1004	946	1336	1180	1670	1886	2672
Class 2												
$1,000	96	140	150	210	150	210	198	280	246	346	392	554
$2,000	186	252	280	376	280	376	372	500	464	624	742	998
$3,000	274	362	410	542	410	542	546	722	680	900	1090	1440
$4,000	354	460	532	690	532	690	708	920	884	1146	1416	1836
$5,000	418	520	628	784	628	784	836	1042	1044	1300	1670	2082
$6,000	442	572	664	856	664	856	882	1140	1102	1424	1764	2278
$7,000	460	606	688	912	688	912	918	1214	1146	1516	1834	2426
$8,000	476	644	716	968	716	968	954	1288	1190	1608	1904	2572
$9,000	484	658	724	984	724	984	966	1312	1206	1638	1928	2622
$10,000	496	682	744	1022	744	1022	990	1362	1234	1702	1976	2722
$11,000	526	744	788	1116	788	1116	1048	1484	1308	1854	2094	2968
$12,000	548	792	822	1188	822	1188	1096	1584	1368	1978	2188	3164
$13,000	560	816	840	1226	840	1226	1120	1634	1396	2040	2234	3262
$14,000	564	830	848	1244	848	1244	1130	1656	1412	2070	2258	3312
$15,000	572	842	856	1262	856	1262	1142	1682	1426	2100	2282	3360
Class 3												
1,000	112	148	168	218	168	218	222	290	276	362	442	578
2,000	208	260	312	392	312	392	416	520	518	643	830	1040
3,000	306	376	460	564	460	564	612	752	762	938	1220	1500
4,000	396	478	596	718	596	718	794	958	990	1194	1584	1912
5,000	468	544	702	814	702	814	934	1086	1166	1354	1864	2168
6,000	494	594	742	892	742	892	988	1186	1232	1482	1972	2370
7,000	514	632	772	950	772	950	1030	1264	1284	1580	2054	2524
8,000	536	672	802	1006	802	1006	1068	1342	1334	1674	2134	2680
9,000	542	684	812	1026	812	1026	1082	1368	1350	1708	2160	2730
10,000	554	710	832	1064	832	1064	1008	1418	1384	1770	2216	2832
11,000	588	772	882	1162	882	1162	1076	1546	1468	1930	2350	3090
12,000	616	826	924	1236	924	1236	1230	1648	1536	2058	2458	3292
13,000	628	850	942	1276	942	1276	1256	1698	1568	2124	2512	3396
14,000	636	864	954	1296	954	1296	1270	1726	1586	2154	2536	3448
15,000	642	876	964	1314	964	1314	1284	1752	1602	2186	2564	3498
Class 4												
$1,000	124	152	186	226	186	226	248	302	308	376	494	600
$2,000	234	270	350	408	350	408	466	542	582	674	930	1080
$3,000	342	390	514	588	514	508	684	782	852	974	1366	1560
$4,000	446	498	666	748	666	748	888	996	1106	1242	1772	1986
$5,000	522	564	786	846	786	846	1046	1128	1304	1408	2088	2252
$6,000	554	618	830	926	830	926	1106	1234	1380	1542	2208	2468
$7,000	576	658	864	988	864	988	1150	1314	1436	1640	2300	2626
$8,000	598	698	898	1046	898	1046	1198	1394	1494	1740	2390	2784
$9,000	606	712	910	1066	910	1066	1212	1422	1512	1774	2420	2838
$10,000	622	738	932	1106	932	1106	1242	1474	1550	1840	2480	2944
$11,000	660	804	990	1206	990	1206	1316	1606	1644	2008	2632	3210
$12,000	688	856	1034	1288	1034	1288	1378	1714	1720	2140	2752	3424
$13,000	704	884	1056	1328	1056	1323	1408	1766	1758	2208	2812	3530
$14,000	712	896	1068	1346	1068	1346	1424	1794	1776	2240	2844	3582
$15,000	720	912	1080	1368	1080	1368	1438	1820	1796	2272	2872	3638
Class 5												
$1,000	118	134	178	202	178	202	236	268	294	332	468	534
2,000	218	242	330	362	330	362	436	480	544	598	872	958
3,000	320	346	478	520	478	520	638	694	796	864	1274	1382
4,000	412	442	620	662	620	662	824	882	1026	1100	1644	1760
5,000	480	500	720	750	720	750	960	1000	1198	1248	1918	1996

Amount of insurance	Gross Receipts											
	Less than $100,000		$100,000 to $199,999		$200,000 to $299,999		$300,000 to $499,999		$500,000 to $999,999		$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
6,000	512	548	768	822	768	822	1024	1094	1278	1366	2048	2184
7,000	538	584	806	874	806	874	1074	1166	1340	1454	2144	2326
8,000	560	618	842	928	842	928	1122	1234	1400	1542	2240	2468
9,000	570	630	854	946	854	946	1138	1260	1422	1570	2274	2514
10,000	586	654	880	980	880	980	1172	1306	1462	1632	2340	2608
11,000	626	712	940	1068	940	1068	1252	1424	1562	1778	2502	2846
12,000	660	760	990	1140	990	1140	1316	1518	1644	1896	2632	3034
13,000	676	784	1012	1176	1012	1176	1350	1566	1684	1956	2696	3130
14,000	682	796	1024	1192	1024	1192	1366	1590	1706	1984	2728	3176
15,000	690	806	1038	1210	1038	1210	1382	1612	1726	2014	2762	3224
Class 6												
$1,000	120	120	178	180	178	180	238	240	294	298	472	476
$2,000	220	216	330	324	330	324	438	430	546	538	874	858
$3,000	320	310	478	466	478	466	638	622	796	774	1274	1240
$4,000	412	396	618	594	618	594	822	792	1024	988	1640	1580
$5,000	476	450	716	674	716	674	954	896	1190	1120	1904	1792
$6,000	512	492	766	738	766	738	1022	980	1276	1224	2042	1960
$7,000	538	522	806	786	806	786	1074	1046	1340	1304	2144	2088
$8,000	562	554	844	832	844	832	1126	1108	1402	1384	2248	2214
$9,000	572	564	856	848	856	848	1142	1130	1426	1410	2280	2256
$10,000	588	586	882	880	882	880	1176	1172	1468	1464	2348	2342
$11,000	632	638	948	960	948	960	1262	1276	1576	1596	2520	2552
$12,000	666	682	998	1022	998	1022	1330	1362	1660	1702	2656	2722
$13,000	682	704	1022	1054	1022	1054	1362	1404	1704	1754	2724	2806
$14,000	690	714	1036	1072	1036	1072	1380	1426	1724	1780	2758	2850
$15,000	700	724	1050	1086	1050	1086	1398	1446	1746	1806	2794	2892

(1) Option 1: Burglary only.
Option 2: Robbery only.
Option 3: A combination of options 1 and 2 in uniform or varying amounts.
(2) See discount page for applicable multipliers and discounts.

(f) If the premises are protected by an acceptable burglar alarm system, class E safe, supervised safe alarm system, holdup alarm or armored car service, premium discounts shall be permitted as follows (Note: Multiply the burglary or robbery premium by the appropriate factor.):

(1) *Burglary credits.*

Premises, alarm system	Safe Alarmed		Safe Not Alarmed	
	Class E or better	Other safe	Class E or better	Other/none
None	.80	.95	.85	1.00
Local	.70	.75	.75	.90
Silent	.65	.75	.70	.80
Central				
—Without guard	.60	.70	.65	.75
—With guard	.55	.65	.60	.70

(2) *Robbery credits.*

Holdup buttons	Protection service	
	Armored car	None
Yes	.85	.90
No	.95	1.00

(3) *Package discount.* Apply a factor of .90 to the total premium if both burglary and robbery are purchased.

These amendments are issued under 12 U.S.C. 1249bbb-17.

Harold T. Duryee,

Federal Insurance Administrator, Federal Insurance Administration.

[FR Doc. 88-216 Filed 1-8-88; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 588

[Docket No. 87-25]

Actions To Adjust or Meet Conditions Unfavorable To Shipping in the United States/Taiwan Trade

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; enlargement of time to comment.

SUMMARY: The Commission initiated this proposed rulemaking by **Federal Register** Notice of December 8, 1987 (52 FR 46505), and established January 7, 1988 as the date comments were due. Orient Overseas Container Line (OOCL) and Yang Ming Marine Transport Corporation (Yang Ming) have now filed separate requests to extend the time for comments for 60 days until March 7, 1988. Both OOCL and Yang Ming cite the complexity of legal and factual issues in the proceeding and the progress of ongoing discussions to resolve these issues. The Departments of State and Transportation have informally advised that they support the requests. The Department of Transportation reports that the Coordination Council for North American Affairs in Taipei has agreed to confirm in writing that they have accepted the position of the American Institute in Taiwan on dockside equipment and port container terminal licenses, the subjects of the Commission's proposed rulemaking. Similarly, and because of the substantial progress which has been and continues to be made on these issues, two U.S.-flag carriers American President Lines, Inc. and Sea-Land Service, Inc., have also informally indicated that they do not oppose a reasonable extension of time. Therefore, for good cause shown, the request for an enlargement of time will be granted.

DATE: Comments due on or before March 7, 1988.

ADDRESS: Joseph C. Polking, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

By the Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 88-402 Filed 1-8-88; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 63, and 76

[MM Docket No. 84-1296]

Implement the Provisions of the Cable Communications Policy Act of 1984

AGENCY: Federal Communications Commission.

ACTION: Order extending time.

SUMMARY: Action taken herein extends the time for filing reply comments in response to the *Further Notice of Proposed Rule Making* in MM Docket No. 84-1296. This Notice requests comments regarding the signal availability measures used in the effective competition standard for cable rate regulation. The City of Dubuque, Iowa, requested the extension of time.

DATES: Reply comments are due January 4, 1988.

ADDRESS: Federal Communications Commission Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Judith Herman, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

Order Granting Motion for Extension of Time to File Comments

Adopted: December 17, 1987.
Released: December 18, 1987.
By the Chief, Mass Media Bureau:

1. On April 11, 1985, the Commission adopted a *Report and Order (Order)* in MM Docket No. 84-1296, 50 FR 18637 May 2, 1985, amending its rules to implement certain provisions of the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, Section 1 *et seq.*, 98 Stat. 2779 (1984)). In this *Order*, the Commission, *inter alia*, defined the circumstances and conditions under which cable franchising authorities may regulate the rates charged by cable operators for "basic cable service." As part of this action, the Commission permitted local rate regulation in those circumstances where cable systems do not face "effective competition." The Commission determined that effective competition for a cable system exists where any three off-the-air television signals were available in the cable community.

2. In *American Civil Liberties Union v. FCC*, Slip op. No. 85-1666 (D.C. Cir., July 17, 1987), the U.S. Court of Appeals ruled that the standard for signal availability in the effective competition test was arbitrary and capricious and remanded the issue to the Commission for a reasoned explanation of the chosen standard or the development of a new standard. As a result of that ruling, the Commission issued a *Further Notice of Proposed Rule Making (Notice)* 52 FR 36802, October 1, 1987, to reexamine the signal availability standard currently embodied in the rules. Comment due dates for this *Notice* were set at November 4, 1987, for initial comments and November 19, 1987, for reply comments.

3. On October 22, 1987, (52 FR 44997, Nov. 24, 1987) the Bureau granted an extension of time in which to file comments that were requested by the Association of Independent Television Stations, Inc., the National League of Cities, the Motion Picture Association of America, the Satellite Broadcasting and Communications Association, and the Massachusetts Community Antenna Television Commission. The period for filing comments was extended to December 4, 1987, for comments and December 21, 1987, for reply comments.

4. On December 16, 1987, the City of Dubuque, Iowa ("City"), filed a motion for further extension of time in which to file reply comments in this proceeding. Petitioner seeks additional time to study the record in order to prepare reply comments on the various issues raised and coordinate them with City officials. Petitioner specifically requests that the due date for reply comments be extended to January 4, 1988.

5. We recognize the significance of the effective competition standard in the regulation of the cable industry. Indeed, the standard is central to the determination of whether or not cable rates are regulated by local franchising authorities. Given the importance of this issue to cable operators, cable franchising authorities and the public, and in the interest of obtaining a more complete record in this matter, we believe it would be beneficial to provide the additional time sought by the petitioner. Thus, we will extend the filing dates for reply comments as requested.

6. Accordingly, it is ordered that the date for filing reply comments in response to the above-referenced *Further Notice of Proposed Rule Making* are extended to January 4, 1988. This action is taken pursuant to authority provided in Section 4(i) of the Communications Act of 1934, as amended, and Section 0.283 of the Commission's rules.

7. For further information concerning this proceeding, contact Judith Herman, Mass Media Bureau, (202) 632-6302.

Federal Communications Commission.
Alex D. Felker,
Chief, Mass Media Bureau.
[FR Doc. 88-344 Filed 1-8-88 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 215

Department of Defense Federal Acquisition Regulation Supplement; Nonprofit Organizations

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: The Defense Acquisition Regulatory Council is considering changes to DFARS 215.972 to increase the Government's protection on contracts with nonprofit organizations.

DATE: Comments on the proposed revisions should be submitted in writing to the Acting Executive Secretary, DAR Council, at the address shown below, on or before March 11, 1988, to be considered in the formulation of the final rule. Please cite DAR Case 87-121 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Owen Green, Acting Executive Secretary, DAR Council, ODASD (P) DARS, c/o OASD (A&L) (MR&S), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Green, Acting Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

A DoD Inspector General report (No. 86-062, February 4, 1986), disclosed a number of problems in regard to contracting with nonprofit organizations. It was found that some nonprofit organizations had built up reserves that were in excess of current operating requirements or future investment plans. Furthermore, the Government's right to assets had not been adequately protected. To correct these problems, revisions are being proposed DoD policies on profit and sponsorship agreements.

B. Regulatory Flexibility Act Information

The proposed change to DFARS 215.972 should not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it applies only to nonprofit organizations. An Initial Regulatory Flexibility Analysis has been prepared and has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from that office. Comments are invited. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 87-610D in correspondence.

C. Paperwork Reduction Act Information

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the proposed rule does not impose any new information collection requirements.

List of Subjects in 48 CFR Part 215

Government procurement.

Owen Green,

Acting Executive Secretary, Defense Acquisition Regulatory Council.

January 6, 1988.

Therefore, it is proposed that 48 CFR Part 215 be amended as follows:

PART 215—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Part 215 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 215.972-1 is amended by revising paragraph (b) to read as follows:

215.972-1 Procedures for establishing fee objectives.

* * * * *

(b) The contracting officer shall consider the contractor's need for fee in assigning a profit value for the performance risk factor. Such consideration shall include the contractor's retained earnings, as established under generally accepted accounting methods, that are relatable to earnings on previous work performed for DoD. The contractor's need for fee may be based on facilities capital plans, working capital requirements, contingency funding, and for funding unreimbursed costs deemed ordinary and necessary. The contracting officer should also take into account income earned on investments made from the retained earnings.

[FR Doc. 88-450 Filed 1-8-88; 8:45 am]

BILLING CODE 3810-01-M

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48 CFR Parts 225 and 252

Department of Defense Federal Acquisition Regulation Supplement; Foreign Acquisition

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is considering revisions to the DoD Federal Acquisition Regulation Supplement (DFARS) at 225.7002 and 252.225-7010 to provide a method for determining the current incentive reflective price for representative types and grades of domestic wools, and to update the terminology and categories to reflect current wood availability, marketing practices and industry techniques. The proposed changes will ensure that the incentive price is kept current without any need for an annual review for possible change to the DFARS, and with current categories and terminology in use, comparison will be facilitated as obsolete distinctions and categories are eliminated.

DATE: Comments on the proposed revisions should be submitted in writing to the Acting Executive Secretary, DAR Council, at the address shown below, on or before March 11, 1988, to be considered in the formulation of the final rule. Please cite DAR Case 85-276 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Owen Green, Acting Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Green, Acting Executive Secretary, DAR Council, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS 225.7002(c)(6) and DFARS 252.225-7010 need to be updated. In each solicitation for supplies containing wool, an evaluation factor must be inserted in DFARS 252.225-7010, the required clause, which is based on the current incentive price established by the Secretary of Agriculture as set forth in DFARS 225.7002(c)(6). If the low offer involves an item containing foreign wool, the offer may be accepted if the current domestic market price of wool is more than 10 percent higher than the incentive reflective price in DFARS 225.7002(c)(6) and, if after adding the evaluation factor in the clause to the foreign item, the foreign offer is still low.

The incentive reflective prices in DFARS 225.7002(c)(6) are not based on the current incentive price established by the Secretary of Agriculture. Further, the types and grades of wool reported in the "Market News," the publication cited in the Domestic Wool Preference Clause for determining the current market price, are not the same as those used for incentive reflective prices in DFARS 225.7002(c)(6). Also, there are now less than half the number of wool types and grades in the current Market News as there were when the DFARS coverage was written. As such, it is necessary to change these sections to reflect the current categories of wool.

B. Regulatory Flexibility Act Information

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the proposed revisions do not change the basic requirement for applying an evaluation factor. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 87-610D in correspondence.

C. Paperwork Reduction Act Information

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the proposed changes do not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Owen Green,

Acting Executive Secretary, Defense Acquisition Regulatory Council.

January 6, 1988.

Therefore, it is proposed that 48 CFR Parts 225 and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 225—FOREIGN ACQUISITION

2. Section 225.7002 is amended by revising paragraph (c)(6) to read as follows:

225.7002 Restriction on food, clothing, fabrics, and speciality metals.

* * * * *

(c) *Preference for domestic wool.*

* * * * *

(6) The evaluation factor to be used under paragraph (c)(5) of this section will be 10% of the average of the following prices of representative grades of domestic wools within that one of the following categories which includes the wool required by the specifications. (The following prices reflect the current incentive price ([1]) per pound grease basis converted to clean basis for each grade. Include all grades of Original Bag Texas and Territory wool, and Graded Territory wool and Graded Fleece wool falling within the applicable category as reported in the Department of Agriculture "Market News".)

[1] Use the current incentive (support) price as established by the Secretary of Agriculture.

REPRESENTATIVE GRADE

	Price clean basis per pound dollars
Category 1—Grades 60's and finer	
The average of the following grades:	
64's	([1])
62's	([1])
60's	([1])
Category 2—Grades 58's and below	
The average of the following grades:	
58's	([1])
56's	([1])
54's	([1])

[1] The price clean basis for each grade is derived by dividing the current incentive price by the first of the two grease percentages for the applicable grades (for which prices are reported) listed in the 4 issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or the closing date of requests for proposals. For solicitation purposes, the evaluation factor shall be computed on the basis of the 4 issues of the "Market News" immediately preceding the issuance of bids or proposals, and adjusted at the time of the opening/closing date of the solicitation if the incentive reflective prices change during the interim.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.225-7010 is revised to read as follows:

252.225-7010 Domestic wool preference.

As prescribed at 225.7002(c)(3), insert the following provision:

Domestic Wool Preference (Date)

(a) It is Congressional policy that, in Department of Defense procurement, preference shall be given to wool grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico, to the extent that articles containing such wool can be procured as and when needed at United States market prices.

(b) If, on the date of opening of bids or the closing date of requests for proposals, the average market price of domestic wool of usable grades (as reported by grade in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or the closing date of requests for proposals) is not more than ten percent (10%) above the average of the prices (for usable grades) which reflect the current incentive price established by the Secretary of Agriculture, award will be made only on bids or proposals offering domestically produced articles of which the wool component is one hundred percent (100%) domestic wool: *Provided*, That such bids or proposals are considered reasonable and otherwise acceptable.

(c) If, on the date of opening of bids or the closing date of requests for proposals, the average market price of domestic wool of usable grades (as reported by grade in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or evaluation of the closing date of requests for proposals) is more than ten percent (10%) above the average of the prices (for usable grades) which reflect the current incentive price, or to the extent that the Government's requirement cannot be filled by awards based on paragraph (b) of this clause, there will be added to each bid or proposal offering articles of which the wool component is one hundred percent (100%) foreign wool, an evaluation factor of $_____ per yard or per item, and there will be added to each bid or proposal offering articles of which the wool component is a blend of domestic and foreign wool that part of the evaluation factor which is in direct proportion to the percentage of foreign wool to be used, and award will be made to the low acceptable bidder.

(d) For these purposes of (b) and (c) above, the average market price of domestic wool of usable grades shall be the average market price of the representative grades set forth in DOD FAR Supplement 225.7002(c)(6) within that one of the categories therein set forth which includes wool which would meet the specifications, and the average of the prices which reflect the current incentive price established by the Secretary of Agriculture shall be the average of the prices set forth in 225.7002(c)(6) for that category.

(e) While bids or proposals offering articles using foreign wool may be considered and evaluated, as stated above, all stages of manufacturing of wool (whether foreign or domestic) must be performed in the United States, its possessions, or Puerto Rico, as required by the contract clause entitled "Preference for Certain Domestic Commodities." This requirement is satisfied as to wool noils, reprocessed for reused wool if the reprocessing (i.e., garnetting or combing) and ensuring manufacture is performed in the United States, its possessions, or Puerto Rico.

(f) The Secretary has determined that, to the extent that any foreign wool is used under an award made pursuant to paragraph (c) of this clause, a satisfactory quality and sufficient quantity of domestic wool cannot be procured as and when needed at United States market prices.

The evaluation factor is subject to adjustment at the opening/closing date for receipt of bids/proposals in accordance with DOD Federal Acquisition Regulation Supplement 225.7002(c)(6).

(End of provision)

[FR Doc. 88-451 Filed 1-8-88; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 72171-7271]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) has determined that U.S. fishermen who wish to fish with pot gear

to groundfish other than sablefish, in the Gulf of Alaska are being unnecessarily constrained. NOAA proposes that current regulations restricting fishing with pot gear for all groundfish species be amended to only restrict fishing for sablefish with pot gear. This amendment is necessary to relieve an overly burdensome gear restriction on U.S. fishermen, while maintaining the Council's groundfish management regime. It is a conservation and management measure intended to facilitate an orderly fishery while carrying out the Council's recommended allocation objectives in the sablefish fishery.

DATE: Comments are invited until January 26, 1988.

ADDRESS: Comments may be sent to Robert W. McVey, Director, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic anf foreign groundfish fisheries in the exclusive economic zone (EEZ or 3-200 miles offshore) of the Gulf of Alaska are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was developed by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR Part 611 and for the U.S. fishery at 50 CFR Part 672.

On September 26, 1985, the Secretary approved Amendment 14 to the FMP, which the Council had adopted at its May 21-24, 1985, meeting. One of the parts of Amendment 14 concerned allocation of sablefish among hook-and-line, trawl, and pot gear types. Specific language in the FMP (section 8.3.1.1), as recommended by the Council and approved by the Secretary in Amendment 14, reads as follows:

(E) Sablefish Gears and Allocations

(1) *Eastern Area* (a) Legal Gear. Legal gear for the taking of sablefish are trawls and hook and lines; (b) Allocation of Sablefish Between Gears. From 1986 forward, vessels using hook-and-line gear shall be permitted to take up to 95 percent of the OY for sablefish. Vessels using trawl gear shall be permitted to harvest up to 5 percent of the optimum yield for sablefish.

(2) *Central Area* (a) Legal Gear. In 1986, legal gears for the taking of sablefish are trawls, hook and lines, and pots. In 1987, and thereafter, legal gears shall be trawls and hook and lines. (b) Allocation of sablefish between gears. In 1986, vessels using hook-and-line gear shall be permitted to take up to 55 percent of the sablefish OY; vessels using pot gear shall be permitted to take up to 25 percent of the OY; and trawl vessels shall be permitted to take up to 20 percent of the OY. In 1987 and thereafter, vessels using hook-and-line gear shall be permitted to take up to 80 percent of the sablefish OY; and vessels using trawl gear shall be permitted to take up to 20 percent of the OY.

(3) *Western Area* (a) Legal Gear. In 1986, 1987, and 1988, legal gears for the taking of sablefish are hook and lines, pots, and trawls. In 1989 and thereafter, legal gears shall be trawls and hook and lines. (b) Allocation of sablefish between gears. In 1986, 1987, and 1988, vessels using hook-and-line gear shall be permitted to take up to 55 percent of the OY for sablefish; vessels using pot gear shall be permitted to take up to 25 percent of the OY; and vessels using trawls may take up to 20 percent of the OY. In 1989 and thereafter, vessels using hook and lines may take up to 80 percent of the OY; and vessels using trawls may take up to 20 percent of the OY.

The above text from the FMP clearly shows that the Council intended Amendment 14 to restrict gear in the sablefish fishery, only. However, the regulation adopted by the Council at its May 21-24, 1985, meeting varied from the FMP text. This regulation was approved by the Secretary and implemented with Amendment 14 (see 50 FR 43193, October 24, 1985). That final rule modified § 672.24(b) (1) and (2) and was subsequently changed by the final rule that implemented Amendment 15 (52 FR 7868, March 13, 1987; corrected at 52 FR 12183, April 15, 1987). Section 672.24(b) currently prohibits the use of gear other than hook-and-line and trawl gear when fishing for groundfish in the Eastern and Central Regulatory Areas. In the Western Regulatory Area, no person may use any gear other than hook-and-line, pot, or trawl gear in fishing for groundfish during 1987 and 1988.

The use of the word "groundfish" instead of "sablefish" in § 672.24(b)(1) and (2) is more restrictive than the FMP text adopted by the Council and approved by the Secretary. The effect of the current regulation at § 672.24(b)(1) and (2) is to limit legal gear types in the Eastern and Central areas of the Gulf of Alaska to hook and lines and trawls, when fishing for any groundfish species, and to completely prohibit pot gear after 1988 when fishing for all groundfish, not just sablefish.

The current gear prohibition for groundfish other than sablefish is a cost to fishermen. One vessel operator was cited by NMFS when he was found using pots in the Central Regulatory Area in violation of the current regulation. As a result, the discrepancy between the FMP and current regulations has come to light. The Regional Director, Council members, and other interested individuals and organizations have received complaints from fishermen who want to use pots when fishing for certain groundfish species other than sablefish, especially Pacific cod. Council staff has reviewed the administrative record, including recorded oral testimony underlying Amendment 14, and affirms that nothing in the record requires the Secretary to interpret the FMP to prohibit the use of pot gear for fishing for any groundfish species except sablefish.

To review options for resolving this issue, the Council's Interim Action Committee conducted a teleconference on November 16, 1987. Participating Council and Advisory Panel members and fishing industry representatives in Kodiak, Sitka, and Seattle reviewed the current regulation during the teleconference and confirmed their understanding that the Council meant to adopt a regulation to prohibit the use of gear other than hook-and-line and trawl gear in the Eastern Regulatory Area, and hook-and-line, trawl, and pot gear in the Central and Western Regulatory Areas, when fishing for sablefish, phasing out the remaining use of pots for sablefish in the Gulf of Alaska after 1988. It meant to continue to allow these three gear types when fishing for other groundfish species. In the teleconference, the Council members present voted unanimously with one abstention to recommend that the Secretary correct the situation as expeditiously as possible by amending the regulation. At its meeting on December 8-11, 1987, the Council voted unanmiously that it intended to allow the use of pot gear for groundfish other than sablefish.

The Secretary, through his designee, has reviewed this issue. He concurs that the regulation as it now reads is not required by the FMP text and is overly burdensome on fishermen who might wish to fish with pots for groundfish other than sablefish. It is especially burdensome to fishermen who fish for crabs with pots in the Central Regulatory Area. About 20 fishermen have expressed an interest to fish for groundfish with pots in the EEZ, as they have for crab, rather than refit their vessels for hook-and-line fishing. The cost of outfitting their boats with hook-and-line gear is about $12,000 per vessel. Since these fishermen already own pots, their incremental expenses would relate to maintenance only. Many of them have stated that they will commence pot fishing as soon as it becomes legal. To maintain the current prohibition against pot fishing for fish other than sablefish would be an unnecessary cost of these fishermen. This rule proposes to amend § 672.24(b)(1) and (2) to allow fishermen to use pots in the Gulf of Alaska while fishing for groundfish other than sablefish.

Since pots are not a legal gear type for sablefish in the Eastern and Central Regulatory Areas, bycatches of sablefish can not be retained. Pots will not be a legal gear type in the Western Regulatory Area after 1988, and bycatches of sablefish can not be retained in that area after that year. The Secretary is not proposing a retainable bycatch of sablefish for pot gear as is provided for trawl gear. Sablefish are in good physical condition when caught in pots and, therefore, the survival rate of discarded sablefish is expected to be high. Sablefish caught in trawl gear do not survive well, due to the stress of compression in a moving trawl. The Secretary finds that a retainable sablefish bycatch in the pot fishery is not necessary, because little incidental mortality occurs during pot fishing.

Fishermen have expressed an interest in using pot gear when fishing for Pacific cod, which is a groundfish species especially abundant in the Central and Western Regulatory Areas, where the continental shelf is broad and affords good habitat for Pacific cod. Due to the narrowness of the continental shelf in the Eastern Regulatory Area, Pacific cod stocks are not abundant. Potential conflicts between pot and hook-and-line gears in the sablefish fishery, which occurs over a narrow continental slope area, were part of the problem addressed in Amendment 14. No gear conflict is likely as a result of this rule because of: (1) The intensive nature of the sablefish hook-and-line fishery, which usually attains its apportionment in only 5-6 weeks; (2) the wide area of continental shelf that pot fishermen may use in the Gulf of Alaska to fish for other species, and (3) the small number of pot gear fishermen who have expressed the desire to participate. In particular, gear conflicts between pot and hook-and-line gears are not expected to be a problem in the Pacific cod fishery in the Western and Central Regulatory Areas, because fishermen using pot gear will be able to fish over a larger area and avoid gear conflicts with those fishing hook and line gear.

Other species groups that may be harvested by pot gear are rockfish, including Pacific ocean perch, and thornyhead rockfish. These occur in deeper water than Pacific cod. In theory, pots could be used to fish for these species and could create gear conflicts with hook-and-line fishermen fishing for sablefish. As a practical matter, the Secretary believes that the likelihood of actual gear conflict is small, because few fishermen have expressed an interest in fishing for rockfish species with pots. In addition, the sablefish hook-and-line fishery is executed over a short time period, which would reduce the chances for gear conflicts should interest in pot fishing for rockfish species increase in the future.

Classification

This rule is proposed under authority of section 305(c)(3) of the Magnuson Act. For reasons stated above, the Administrator of NOAA has determined that this proposed rule appears to be necessary for the conservation and management of the groundfish fisheries in the Gulf of Alaska and consistent with the Magnuson Act.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

The Administrator of NOAA has determined that this is not a major action requiring a regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small business entities, because the action relieves a regulatory burden on them. Fishermen already possessing pot gear will be able to use that gear to fish for groundfish species other than sablefish, rather than having to refit their vessels with hook-and-line gear at an estimated cost of $12,000. Any sablefish caught in pots in a restricted regulatory area of the Gulf of Alaska must be returned to the sea. No biological effect on the sablefish resource is anticipated because of the nearly 100 percent survival of sablefish released from pots.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

NOAA has determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under Section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 672

Fisheries.

Dated: January 6, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, Part 672 is proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.24, paragraphs (b)(1) and (2) are revised to read as follows:

§ 672.24 Gear limitations.

* * * * *

(b) * * *

(1) *Eastern Area.* No person may use any gear other than hook-and-line and trawl gear when fishing for sablefish in the Eastern Area. No person may use any gear other than hook-and-line gear to engage in directed fishing for sablefish. When vessels using trawl gear have harvested 5 percent of the TAC for sablefish during any year, further trawl catches of sablefish must be treated as prohibited species as provided by paragraph (b)(3)(ii) of this section. Vessels using gear types other than those specified above in the Eastern Regulatory Area must treat any catch of sablefish as a prohibited species.

(2) Central and Western Areas. During 1987 and 1988 in the Western Area, hook-and-line gear may be used to take up to 55 percent of the TAC for sablefish; pot gear may be used to take up to 25 percent of that TAC; and trawl gear may be used to take up to 20 percent of that TAC. Beginning with 1987 in the Central Area and 1989 in the Western Area, hook-and-line gear may be used to take up to 80 percent of the sablefish TAC in each area and trawl gear may be used to take up to 20 percent of that TAC. Vessels using gear types other than hook and line and trawl in the Central Regulatory Area, and vessels using gear types other than hook and line and trawl gear in the Western Regulatory Area after 1988, must treat any catch of sablefish in these areas as a prohibited species.

* * * * *

[FR Doc. 88-438 Filed 1-6-88; 4:33 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 6
Monday, January 11, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

National Marketing Quotas for Fire-cured (Type 21), Fire-cured (Types 22-23), Dark Air-cured (Types 35-36), Virginia Sun-cured (Type 37), and Cigar-filler and Cigar-binder (Types 42-44; 53-55) Tobaccos

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: the Secretary of Agriculture is required by the Agricultural Adjustment Act of 1938, as amended, to proclaim by March 1, 1988, national marketing quotas for fire-cured (types 21-23) and dark air-cured (types 35-360 tobaccos for the 1988-89, 1989-90, and 1990-91 marketing years and to determine and announce the amounts of the national marketing quotas for fire-cured (type 21), fire-cured (types 22-23), dark air-cured (types 35-36), Virginia sun-cured (type 37), and cigar-filler and cigar-binder (types 42-44; 53-55) kinds of tobacco for the 1988-89 marketing year. The public is invited to submit written comments, views and recommendations concerning the determination of the national marketing quotas for such kinds of tobacco, the conduct of the referendum, and other related matters which are discussed in this notice.

DATE: Comments must be received on or before February 10, 1988, in order to be assured of consideration.

ADDRESSES: Send comments to the Director, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to the notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 3741, South Building, 14th and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736, South Building, P.O. Box 2415, Washington, DC 20013 (202) 447-5187. The Preliminary Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." It has been determined that the implementation of these proposed determinations will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), requires that, with respect to fire-cured (types 21-23) and dark air-cured (types 35-36) tobaccos, the Secretary of Agriculture must proclaim by March 1, 1988, the respective national marketing quotas for the 1988-90, and 1990-91 marketing years. In addition, the Secretary is required to conduct, within 30 days after proclamation of such national marketing quotas, referenda of farmers engaged in the 1987 production of this kind of tobacco to determine whether they favor or oppose marketing quotas for such years. For fire-cured and dark air-cured tobacco the 1987-88 marketing year is the last year of the three consecutive marketing years for which marketing quotas previously proclaimed will be in effect for this kind of tobacco.

The Secretary is also required: (1) To determine and announce the amounts of the national marketing quotas with respect to fire-cured (type 21), fire-cured (types 22-23), dark air-cured (types 35-36), Virginia sun-cured, and cigar-filler and cigar-binder (types 42-44, 53-55) tobaccos for the 1988-89 marketing year; (2) to convert such marketing quotas into national acreage allotments and announce the allotments; (3) to apportion such allotments less reserves of not to exceed 1 percent of each kind of tobacco respectively, through county ASCS committees among old farms; and (4) to apportion the reserves for use in (a) establishing acreage allotments for new farms and (b) making corrections and adjusting inequities in old farm allotments. The five kinds of tobacco to which this notice applies account for approximately 3 percent of the total U.S. tobacco production.

Section 312(b) of the Act (7 U.S.C. 1312(b)) provides that the Secretary shall determine and announce, not later than the first day of March 1988, with respect to kinds of tobacco specified in this notice of proposed determination, the amount of the national marketing quota which will be in effect for the 1988-89 marketing year in terms of the total quantity to tobacco which may be marketed which will make available during such marketing year a supply of each kind of tobacco equal to the reserve supply level. Section 312(b) provides further that the amount of such 1988-89 national marketing quota may, not later than March 1, 1988, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

The aggregate reserve supply level for the 1987–88 marketing year for the 5 kinds of tobacco discussed in this notice was determined to be 245 million pounds (52 FR 33453). The proposed reserve supply level for the 1988–89 marketing year will range between 210 million and 270 million pounds. The aggregate total supply for the 1987–88 marketing year is 251 million pounds based on carryover of 210 million and production of 41 million pounds.

Section 312(c) of the Act (7 U.S.C. 1312(c)) provides that, within 30 days after a national marketing quota is proclaimed in accordance with section 312(a) of the Act for a kind of tobacco, the Secretary shall conduct a referendum of farmers engaged in the production of the crop of such kinds of tobacco harvested immediately prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to such quotas for the next three succeeding marketing years. If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose the quotas, such results shall be proclaimed by the Secretary and the national marketing quotas so proclaimed shall not be in effect, but the results shall in no way affect or limit the subsequent proclamation and submission to a referendum of a national marketing quota as otherwise authorized in section 312.

Section 313(g) of the Act (7 U.S.C. 1313(g)) authorizes the Secretary to convert the national marketing quota into a national acreage allotment by dividing the national marketing quota by the national average yield for the five years immediately preceding the year in which the national marketing quota is proclaimed. In addition, the Secretary is authorized to apportion through county committees the national acreage allotment to tobacco producing farms (less a reserve not to exceed 1 percent thereof for new farms, and for making corrections and adjusting inequities in old farm allotments) among old farms.

Proposed Determinations

Accordingly, comments are requested on the following proposed determinations for the kinds of tobacco listed for the 1988–89 marketing

1. With respect to fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured, and cigar-filler and binder (types 42–44; 53–55) tobaccos:

a. The amount of the reserve supply level, within the aggregate range of 210 and 270 million pounds;

b. The amount of the national marketing quota for each kind of tobacco for the 1988–89 marketing year, within an aggregate range of 40 million-70 million pounds; and

c. The amounts of the national acreage allotments to be reserved for new farms, and for making corrections and adjusting inequities in old farm allotments, within the aggregate range of 100 and 500 acres.

2. With respect to fire-cured and dark air-cured tobaccos:

a. The date(s) or period(s) of the referenda for determining whether quotas will be in effect for the 1988–89, 1989–90, and 1990–91 marketing years for such kinds of tobacco; and

b. Whether the referenda should be conducted at polling places rather than by mail ballot (See 7 CFR Part 717).

Authority: Secs. 301, 312 and 313, 52 Stat. 38, as amended, 46, as amended, and 47, as amended (7 U.S.C. 1301, 1312 and 1313).

Signed at Washington, DC on January 5, 1988.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88–386 Filed 1–8–88; 8:45 am]

BILLING CODE 3410-05-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of ATBCB meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 2:00 to 5:00, on Wednesday, January 20, 1988, to take place in the Hilton Hotel, 255 Courtland Street NE., Atlanta, Georgia 30043.

Item on the Agenda: Recommendations from the ATBCB Organization and Management Study.

DATE: Wednesday, January 20, 1988, 2:00 to 5:00 p.m.

ADDRESS: Hilton Hotel, 255 Courtland Street NE., Atlanta, Georgia 30043.

FOR FURTHER INFORMATION CONTACT: Barbara Gilley, Administrative Officer, (202) 245–1591 (voice or TDD).

Margaret Milner,

Executive Director.

[FR Doc. 88–418 Filed 1–8–88; 8:45 am]

BILLING CODE 6820-BP-M

DEPARTMENT OF COMMERCE

International Trade Administration

Department of Agriculture et al.; Application for Duty-Free Entry of Scientific Instruments; Correction

In FR Doc. 87–28239 page 46638 in the **Federal Register** of December 9, 1987, the date of March 14, 1987 appearing in column 3 lines 32, 41 and 50 should read May 14, 1987.

On page 46639, column 2 lines 4 and 5 are corrected to read: *Application Received by Commissioner of Customs:* November 3, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–436 Filed 1–8–88; 8:45 am]

BILING CODE 3510-DS-M

Withdrawal of Application for Duty-Free Entry of Scientific Instruments; The Massachusetts Eye and Ear Infirmary

The Massachusetts Eye and Ear Infirmary has withdrawn Docket Number 87–158, an application for duty-free entry of an electron microscope. We have discontinued processing in accordance with § 301.5(g) of 15 CFR Part 301.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–437 Filed 1–8–88; 8:45 am]

BILING CODE 3510-DS-M

Short-Supply Review on Certain Tubular Products; Request for Comments

January 4, 1988

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.–EC Pipe and Tube Arrangement, Article 8 of the U.S.-Mexico Arrangement Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel

Products, with respect to certain oil country tubular goods.

EFFECTIVE DATE: Comments must be submitted no later then January 21, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Pipe and Tube Arrangement, Article 8 of the U.S.-Mexico Arrangement Concerning Trade in Certain Steel Products and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the United States determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for certain seamless oil country tubular goods, with heavy upsets, in A.P.I. grades L-80 and P-110, ranging from 7.0 to 9.625 inches in diameter and weighing 29.0 to 53.5 pounds per foot.

Any party interested in commenting on this request should send written comments as soon as possible, but no later than January 21, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099, at the above address.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

January 4, 1988.

[FR Doc. 88-435 Filed 1-8-88; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Extension of Charter for Advisory Committee on Integrated Long-Term Strategy

ACTION: Extension of charter for Advisory Committee on Integrated Long-Term Strategy.

SUMMARY: Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the charter for the Advisory Committee on Integrated Long-Term Strategy has been amended to extend the life of the Committee from 18 to 24 months, until October 24, 1988, as allowed under the Act.

The Advisory Committee on Integrated Long-Term Strategy serves the public interest by providing the Secretary of Defense and the President's National Security Advisor with an independent, informed assessment of the policy and strategy implications of advanced technologies for strategic defense, strategic offense, and theater warfare, including conventional war.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 5, 1988.

[FR Doc. 88-401 Filed 1-8-88; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, January 5, 1988; Tuesday, January 12, 1988; Tuesday, January 19, 1988; and Tuesday, January 26, 1988 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meeting have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer Department of Defense.

January 6, 1988.

[FR Doc. 88-452 Filed 1-8-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Air Force Institute of Technology Subcommittee of the Air University Board of Visitors; Meeting

The Air Force Institute of Technology Subcommittee of the Air University Board of Visitors will hold an open meeting at 9 a.m. on 2 March 1988, in the Commandant's Conference Room (ten seats available), building 125, Wright-Patterson Air Force Base, Ohio.

The purpose of the meeting is to give the subcommittee the opportunity to present to the Commandant, Air Force Institute of Technology, a report of findings and recommendations concerning the Institute's educational programs. The findings of the subcommittee will also be reported to the Commander, Air University, at the next regularly scheduled meeting of the Air University Board of Visitors.

For further information on this meeting, contact Major Ann Lisa Piercy-Pont, Chief, Evaluation and Technology, Directorate of Operations and Plans, Air Force Institute of Technology, (513) 255-5760 or 5480.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 88-373 Filed 1-8-88; 8:45 am]

BILLING CODE 3910-01-M

Air University Board of Visitors

21 December 1987.

The Air University Board of Visitors will hold an open meeting on 10-13 April 1988 at Maxwell Air Force Base, Alabama.

The purpose of the meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, Air University, a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Dr. Dorothy D. Reed, Coordinator, Air University Board of Visitors, Headquarters, Air University, Maxwell Air Force Base, Alabama 36112-5001, telephone (205) 293-5157.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

FR Doc. 88-374 Filed 1-8-88; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Military Personal Property Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Symposium. This meeting will be held on 28 January 1988 at the Sheraton Hotel, Crystal City, Arlington, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

Proposed Agenda

The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT-PPM, at telephone number 756-1600, between 0800-1530 hours. Topics to be discussed should be received on or before 14 January 1988.

Date: December 28, 1987.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 88-375 Filed 1-8-88; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command; Policy Change Concerning Trip Leasing

AGENCY: Military Traffic Management Command (MTMC), Department of the Army, Department of Defense (DOD).

ACTION: The Department of Defense is proposing to prohibit the use of trip-leased equipment and drivers to transport DOD freight.

SUMMARY: Current DOD policy prohibits the use of trip-leased equipment for transporting shipments requiring a Transportation Protective Service. The DOD proposes to prohibit short-term trip leases for all shipments. It is essential that DOD have control over all shipments and will no longer tender shipments to carriers on trip leases without specific authorization by MTMC. The vehicles used must be owned or leased under a valid agreement by the company transporting the shipment, and the vehicle drivers must be full-time employees or under the direct control and responsibility of that company. The lease must be for a minimum of 30 days.

DATE: Comments must be received on or before 22 February 1988.

ADDRESS: Comments should be addressed to: Headquarters, Military Traffic Management Command, ATTN: MT-INFF, 5611 Columbia Pike, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Kuhn, HQMTMC, 5611 Columbia Pike, Falls Church, VA 22041-5050, (202) 756-1887.

SUPPLEMENTARY INFORMATION: Service is the primary concern when shipping Government freight. The Freight Carrier Performance Program was established by MTMC to ensure a satisfactory level of service is provided by carriers transporting DOD freight. Since the Interstate Commerce Commission has allowed for the expanded use of trip leasing, the majority of serious service complaints concerned trip-leased loads. Among the major concerns are the loss of control by the authorized carrier, the susceptibility for payment disputes between the lessor and the lessee leading to delay or loss of DOD freight, and the carrier's lack of adequate screening of trip-leased drivers.

Leasing of equipment is only acceptable when it is on a long term basis. To be considered a long-term lease, the lease must be in writing, signed by the lessor and lessee, and must not contain a provision authorizing cancellation by either party on less than 30 days notice. In addition, the lease must provide for the exclusive possession, control, and use of the equipment, and for the complete assumption of liability. The leased equipment may not be further leased or subject to any other carrier for the duration of the lease. Any exceptions to this rule must be approved by MTMC and will only be approved on a movement-by-movement basis.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88-376 Filed 1-8-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132]

Notice Inviting Applications for New Awards Under the Centers for Independent Living Program for Fiscal Year 1988

Purpose: Provides grants to State vocational rehabilitation agencies, local public agencies, or private nonprofit organizations for the support of centers for independent living.

Deadline for Transmittal of Applications: April 1, 1988 for designated State units, and May 2, 1988 for local public agencies or private nonprofit organizations.

Deadline for Intergovernmental Review Comments: July 6, 1988.

Applications Available: February 1, 1988.

Available Funds: $1,180,000.

Estimated Range of Awards: $150,000-$250,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 6.

Project Period: 36 months.

Applicable Regulations: (a) Regulations governing the Centers for Independent Living Program (34 CFR Part 366); and (b) the Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(1), the Secretary especially urges the submission of fiscal year 1988 applications for new projects that respond to one or both of the following invitational priorities: (1) to provide services which assist individuals with severe handicaps to make the transition from school or institution to work and community living; and (2) to serve a broad range of disability groups. However, an application submitted under this notice that meets an invitational priority will not be given preference over other applications. The principal eligible applicants under this program are designated State vocational rehabilitation units. Awards may also be made to local public agencies or private nonprofit organizations within a State, if the designated State unit has not submitted an application within three months after the Secretary begins accepting new applications in any fiscal year. In addition, pursuant to 29 U.S.C. 711(h) and 34 CFR 75.105(c)(2)(i), a competitive preference will be given those applications that demonstrate that the proposed project will serve geographic areas which are currently not served or are underserved by independent living centers. This competitive preference will be implemented by awarding those applications that meet this priority in a particularly effective way up to 20 additional points to those earned by the applicant under 34 CFR 366.31.

For Applications or Information Contact: Deidre A. Davis, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW., Room 3328 Mary E. Switzer Building, MS 2312, Washington, DC 20202. Telephone: (202) 732–1326.

Program Authority: 29 U.S.C. 796e.

Dated: December 23, 1987.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 88–419 Filed 1–8–88; 8:45 am]

BILLING CODE 4000–10–M

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Amendment to Notice.

SUMMARY: This document is intended to notify the general public of a change to the notice of a meeting of the National Advisory Council on Indian Education as published on December 15, 1987, on Page 47627, Vol. 52, No. 240 of the **Federal Register.**

The location and agenda remain the same, except that the full council will meet in closed session on January 19, 1988, from approximately 8:30 a.m. until approximately 9:30 a.m.

The Council will meet in closed session to discuss personnel matters. These discussions will relate solely to the internal personnel rules and practices of the Department and will touch upon matters that would disclose information of a personal nature where disclosures would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of Title 5 U.S.C.

A summary of the activities of the closed meeting and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Date: December 28, 1987.

Signed at Washington, DC.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 88–443 Filed 1–8–88; 8:45 am]

BILLING CODE 4000–01–M

Advisory Committtee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committee of Student Financial Assistance. This notice also describes the functions of the committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: January 25, 1988 beginning at 9:00 a.m. and ending 9:00 p.m.; and January 26, 1988 beginning at 9:00 a.m. and ending at 5:00 p.m. A portion of the meeting will be closed on January 25, 1988 from 5:00 until 9:00 p.m.

ADDRESSES: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Robert E. Jamroz, Special Assistant to the Assistant Secretary for Postsecondary Education, Office of Postsecondary Education, U.S. Department of Education, Room 4082, ROB3, 400 Maryland Avenue SE., Washington, DC 20202 (202) 732–3547.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Pub. L. 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Sercretary of Education on student financial aid matters, including providing terchnical expertise with regard to systems of need analysis and application forms and making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students.

The meeting of the Advisory Committee will be closed to the pubic from 5:00 p.m. until 9:00 p.m. on January 25, 1988 to review applications and interview canditates for the position of Staff Director of the Committee. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix I) and under exemption (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c)(6). Discussion of the applications will include consideration of the qualifications and fitness of the candidates and will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

The proposed agenda includes:

—Briefings on the Advisory Committee's role by Majority and Ranking Minority members of the Senate Subcommittee on Education, Arts, and Humanities and of the House of Representatives Subcommittee on Postsecondary Education;

—Review and selection of applicants for the position of Staff Director;

—Briefings on the need analysis formulae by the U.S. Department of Education, the Need Analysis Committee of the National Association of Student Financial Aid Administrators, the College Scholarship Service, the American College Testing Program, the Pennsylvania Higher Education Assistance Agency, and the Illinois State Scholarship Commission.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, Room 4082, 7th and D Streets SW., Washington, DC from the hours of

9:00 a.m. to 5:00 p.m., weekdays, except Federal holidays.

Dated: January 5, 1988

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88403 Filed 1-8-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer:

RTD/SD (EU)-51, for the retransfer of 17 irradiated fuel rods from Kraftwerk Union, Karlstein, the Federal Republic of Germany to Switzerland for storage with irradiated power reactor fuel assemblies at the Gosgen reactor site. The fuel rods contain 30,700 grams of uranium enriched to 1.06 percent in the isotope uranium-235 and 287 grams of plutonium.

In the accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: January 5, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-426 Filed 1-8-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above mentioned agreements for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: from Switzerland to the United Kingdom (British Nuclear Fuels, Ltd.) for the purpose of reprocessing, 28 irradiated fuel assemblies, containing approximately 8,785 kilograms of uranium, enriched to approximately 1.03% in U-235 and 83 kilograms of plutonium, from the Beznau nuclear power station. This subsequent arrangement is designated as RTD/EU (SD)-66. The Department of Energy has received letters of assurance from the Government of Switzerland that the recovered uranium and plutonium will be stored in the United Kingdom, and will not be transferred from the United Kingdom, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee of Foreign Affairs of the House of Representatives and the Committee of Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

Date: January 5, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Enegy Emergencies.

[FR Doc. 88-427 Filed 1-8-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; Sweden

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SW(EU)-143, for the transfer of fuel elements containing 281 grams of uranium, enriched to approximately 92.53 percent in the isotope uranium-235 from Hanau, the Republic of Germany to Sweden, for use as fuel for the R-2 reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: January 5, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-428 Filed 1-8-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Consent Order with Phillips Petroleum Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order with opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Phillips Petroleum Company (Phillips) for $30,000,000. This agreement proposes to settle matters not previously resolved in the Consent Order with Phillips dated November 9, 1979, (44 FR 66984), and does not revoke or supersede the 1979 Consent Order for the period relating to Phillips' compliance with the federal petroleum price and allocation regulations prior to November 1, 1979.

DATE: February 10, 1988.

ADDRESS: Send comments to: Phillips Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8900.

SUPPLEMENTARY INFORMATION: On December 18, 1987, the ERA executed a proposed Consent Order with Phillips. Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Order for thirty (30) days following publication of this Notice.

Comments should be addressed to: Phillips Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585. Although ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order, or issue the Consent Order as signed. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant comments, as well as any other considerations that were relevant to the decision.

I. Background

Phillips is a petroleum refiner and a producer subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price and allocation regulations. During the period covered by this proposed Order, Phillips engaged in, among other things, the production, sale, and refining of crude oil. On November 9, 1979, Phillips and DOE entered into a Consent Order (hereinafter 1979 Consent Order) which settled all claims and disputes against Phillips by DOE for the period March 5, 1973, through October 31, 1979, with respect to the statutory and regulatory petroleum programs administered and enforced by DOE and its predecessor agencies. The 1979 Consent Order also addressed certain aspects of Phillips' compliance with ongoing DOE programs following the period covered by the 1979 Consent Order.

Following the 1979 Consent Order, DOE conducted an audit of Phillips' compliance with the federal petroleum price and allocation regulations for the period after October 31, 1979. As a result of this audit, DOE raised issues with respect to the sale of lower or upper tier crude oil in transactions which were related to transactions involving Phillips' acquisition of price-exempt crude oil. Specifically, on January 16, 1987, DOE issued a Proposed Remedial Order, Case No. RPHE00601, which alleged that during the audit period from November 1, 1979, through January 27, 1981, Phillips entered into contingent contracts with two crude oil resellers to sell certain quantities of price-controlled crude oil, certified as lower and upper tier, and the crude resellers agreed to sell Phillips equal volumes of entitlements-exempt foreign and domestic crude oil at prices substantially below market prices. The PRO alleges that, as a result, Phillips received prices in excess of those permitted in its sales of the controlled crude oil. The total excess consideration, or premiums, alleged in the PRO to have been unlawfully received by Phillips from the two resellers for the barrels of domestic price-controlled crude oil was $50,849,950, plus interest through November 30, 1986, of approximately $68 million. Phillips maintains, however, that its conduct with respect to these transactions was in all respects lawful and in accordance with the federal petroleum price and allocation regulations, and with the terms of the 1979 Consent Order.

Moreover, Phillips argued that the potential liability for these transactions had been resolved by the 1979 Consent Order. DOE and Phillips disagree concerning the lawfulness of these transactions and the applicability of the 1979 Consent Order concerning these transactions, and each party believes that its respective position is meritorious. In order to avoid the expense of protracted and complex litigation and the disruption of orderly business functions Phillips has agreed to enter into this Consent Order.

II. Consent Order

ERA has preliminarily agreed to the $30,000,000 settlement amount after assessing the litigation risks, including issues concerning the scope of the 1979 Consent Order provisions, and the time and expense required for the government to fully litigate every issue. Based on these factors, DOE has tentatively concluded that this Consent Order constitutes a satisfactory resolution of the matters covered therein and is in the public interest. Following execution of the proposed Consent Order, ERA has withdrawn the January 16, 1987 Proposed Remedial Order, but without prejudice unless the proposed Consent Order is not made final.

Except as specifically excluded, all pending and potential civil and administrative claims, or other proceedings by DOE allocation regulations for the period covered by this Consent Order, November 1, 1979, through the date of execution, would be resolved and extinguished by this proposed Consent Order.

DOE and Phillips have not resolved the pending litigation in *Aminoil USA, Inc.* v. *Department of Energy*, C.A. No. H–78–1702 (S.D. Texas), consolidated in *In Re the Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (D. Kan). Therefore, the claims, counterclaims or defenses that are or may be asserted by DOE or Phillips with respect to the properties at issue in the Aminoil Stripper Well Litigation are excluded from the matters covered by this Consent Order.

Under the terms of the Consent Order Phillips is required to pay the sum of $30,000,000 within thirty (30) days of the effective date of the Consent Order and shall maintain records as are necessary to demonstrate compliance with the terms of this Consent Order. In addition, Phillips shall maintain certain records related to the transactions at issue in the January 16, 1987 Proposed Remedial Order to assist DOE in the distribution of the Consent Order proceeds.

III. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this proposed Consent Order to the address given above. The ERA will consider all comments it receives by 4:30 p.m., local time, on the 30th day after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures set forth in 10 CFR 205.9(f).

The Consent Order shall become effective as a final Order of the DOE upon notice of that effect being published in the **Federal Register**.

Issued in Washington, DC on this 5th day of January 1988.

Chandler L. van Orman,

Deputy Administrator, Economic Regulatory Administration.

Phillips Petroleum Company; Consent Order

I. Introduction

101. This Consent Order is entered into between Phillips Petroleum Company and the United States Department of Energy ("DOE"). Except as specifically excluded herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Phillips, as hereinafter defined, relating to Phillips' compliance with the federal petroleum price and allocation regulations, as hereinafter defined, during the period November 1, 1979, through the date of execution hereof (hereinafter "the period covered by this Consent Order"). (All the matters settled and resolved by this Consent Order are referred to hereinafter as "the matters covered by this Consent Order.") An earlier Consent Order (the "1979 Consent Order.") An earlier Consent Order (the "1979 Consent Order") was entered into between Phillips and DOE on November 9, 1979. This Consent Order does not revoke or supersede the 1979 Consent Order for the period relating to Phillips' compliance with the federal petroleum price and allocation regulations prior to November 1, 1979.

II. Jurisdiction, Regulatory Authority, and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193; Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration ("ERA") was created by section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204–4, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA. In Delegation No. 0204–4A, the Administrator delegated to the Special Counsel authority to audit the compliance of refiners with the federal petroleum price and allocation regulations and to take appropriate enforcement actions based upon such audits.

203. The following definitions apply for purposes of this Consent Order:

a. "Federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders, including the 1979 Consent Order, regarding the pricing and allocation of crude oil and refined petroleum products, including the entitlements and mandatory oil imports programs administered by DOE. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212 and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order, except to the extent inconsistent herewith.

b. "DOE" includes not only the Department of Energy, but also the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Department of Energy, ERA, the Office of Special Counsel ("OSC") and all predecessor and successor agencies.

c. "Phillips" includes (without limitation) Phillips Petroleum Company, and all of its subsidiaries, affiliates (including the acts of such companies before they were subsidiaries or affiliates), predecessors, successors in interest, and their petroleum–related activities as refiner, producer, operator, reseller, retailer, natural gas processor, or otherwise, and except for paragraph 401, *infra*, officers, directors and employees of Phillips.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. Phillips is a "refiner" and a "producer" as those terms are defined in the federal petroleum price and allocation regulations and is subject to the jurisdiction of the DOE. During the period covered by the Consent Order, Phillips engaged in, among other things, the production, sale, and refining of crude oil.

302. On November 9, 1979, Phillips and DOE entered into a Consent Order which settled all claims and disputes against Phillips by DOE for the period March 5, 1973, through October 31, 1979, with respect to the statutory and regulatory petroleum programs administered and enforced by DOE and its predecessor agencies. The 1979 Consent Order also addressed certain aspects of Phillips' compliance with ongoing DOE programs following the period covered by the 1979 Consent Order.

303. Following the 1979 Consent Order, DOE conducted an audit of Phillips' compliance with the federal petroleum price and allocation regulations for the period after October 31, 1979. DOE has found no evidence that Phillips has committed any willful or intentional violations of the federal petroleum price and allocation regulations.

304. As a result of this audit, DOE has raised issues with respect to certain related purchases and sales of crude oil in which Phillips sold price-controlled crude oil to two resellers and purchased exempt crude oil from those resellers. On January 16, 1987, DOE issued a Proposed Remedial Order alleging that these transactions violated certain federal petroleum price and allocation regulations. Phillips maintains, however, that its conduct with respect to these transactions was in all respects lawful and in accordance with the federal petroleum price and allocation regulations and with the terms of the 1979 Consent Order. DOE and Phillips disagree in several respects concerning the lawfulness of these transactions, and each party believes that its respective position is meritorius. However, in order to avoid the expense of protracted and complex litigation and the disruption of orderly business functions, Phillips has agreed to enter into this Consent Order. The DOE believes that this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest. In consideration of the execution of this Consent Order, ERA agrees to withdraw the January 16, 1987 Proposed Remedial Order within five days of execution of this Consent Order, without prejudice to refiling in the event this Consent Order is not made final.

IV Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order an lieu of all other remedies which have been or might have been sought by the

DOE against Phillips for such matters under 10 CFR 205.199I or otherwise, Phillips shall pay a total of exactly thirty million dollars ($30,000,000.00) to DOE within 30 days of the effective date of the Consent Order. Payment shall be by wire transfer, pursuant to directions provided to Phillips by DOE.

V. Issues Resolved

501. Except as specifically excluded herein, all pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by DOE regarding Phillips' compliance with all federal petroleum price and allocation regulations for the period covered by this Consent Order, November 1, 1979, through the date of execution hereof, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Notice of Proposed Disallowance, Proposed Remedial Order, Remedial Order, action in court or otherwise, are resolved and extinguished as to Phillips by this Consent Order.

502. As of the date of execution of this Consent Order, the DOE and Phillips had not resolved the pending litigation in *Aminoil USA, Inc.* v. *Department of Energy*, C.A. No. H-78-1702 (S.D. Texas), consolidated in *In re the Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (D. Kan.) (hereinafter the "Aminoil Stripper Well Litigation"). Accordingly, the claims, counterclaims or defenses that are or may be asserted by DOE or Phillips with respect to the properties at issue in the Aminoil Stripper Well Litigation are excluded from the matters covered by this Consent Order.

503(a). Except as otherwise provided herein, compliance by Phillips with this Consent Order shall be deemed by the DOE to constitute full compliance for all civil and adminstrative purposes with all federal petroleum price and allocation regulations for the matters covered by this Consent Order. In consideration of Phillips' performance as required under this Consent Order, DOE hereby releases Phillips completely and for all purposes from all administrative and civil judicial claims, demands, liabilities, or causes of action, including without limitation, claims for civil penalties, that the DOE has asserted or may otherwise be able to assert against Phillips for alleged violation of the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil matter against Phillips or cause ¼or refer any such matter to be initiated or prosecuted, nor will DOE or any successor directly or indirectly aid in the initiation of any such administrative or civil matter against Phillips or participate voluntairly in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or judicial proceeding that Phillips has violated the federal petroleum price and allocation regulations with respect to matters covered by this Consent Order or otherwise take any action with respect to Phillips in derogation of this Consent Order. However, nothing contained herein shall preclude the DOE from defending the validity of the federal petroleum price and allocation regulations.

503(b). Except as otherwise provided, this Consent Order settles and finally resolves all aspects of Phillips' liability to the DOE under the federal petroleum price and allocation regulations for the matters covered by this Consent Order, including but not limited to its capacity as an operator or working interest or royalty interest owner of a crude oil producing property. In addition, where Phillips was the operator of a property that produced crude oil, the DOE shall not initiate or prosecute any efforcement action against any person for noncompliance with the federal petroleum price and allocation regulations during such period relative to such property, except to the extent such person received its interest from such property in kind. However, the DOE reserves the right to initiate and prosecute enforcement actions against any person other than Phillips for noncompliance with the federal petroleum price and allocation regulations, including, for example, suits against operators for overchargers for crude oil when Phillips was or is a working interest or royalty interest owner in such crude oil production. Phillips and the DOE agree that the amount paid to the DOE pursuant to this Consent Order is not attributable to Phillips' activities as a working interest or royalty interest owner on properties on which it was not or is not the operator. Futhermore, Phillips and DOE agree that the Consent Order and the payments hereunder do not resolve, reduce or release the liability of any other person for violations on properties of which (but only for the times during which) Phillips was or is a working interest or royalty interest owner (and not the operator) or affect any rights or obligations between Phillips and the operator or any other working interest or royalty interest owner.

503(c). The DOE will not seek or recommend any criminal fines or penalties based on the information and evidence presently in its possession for the matters covered by this Consent Order; provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence presently known to the DOE, that a criminal violation may have occurred or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations of law to appropriate authorities. Nothing contained herein may be construed as a bar, estoppel, or defense against any criminal action, or civil action brought by an agency of the United States other than the DOE under (i) section 210 of the Economic Stabilization Act of 1970 or (ii) any statue or regulation other than the federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party or Phillips in any private action, including an action for contribution by or against Phillips.

503(d). With respect to the matters covered by this Consent Order, Phillips releases DOE completely and for all purposes from all administrative and civil judicial claims, liabilities, or causes of action that Phillips has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the federal petroleum price and allocation regulations. This release, however, does not cover or affect Philips' rights in all regards concerning claims under 10 CFR Part 205, Subpart V or its claims arising from alleged violations or settlements of alleged violations of federal petroleum price and allocation regulations by third parties. This release, moreover, does not preclude Phillips from asserting any factual or legal position or argument as a defense against any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States.

505. Execution of this Consent Order constitutes neither an admission by Phillips nor a finding by the DOE of any violation by Phillips of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE will not seek any such civil penalties. The payment made by Philips pursuant to this Consent Order is not to be considered for any purpose as a

penalty, fine, or forfeiture or as a payment in lieu of penalties, fines or forfeitures.

506. Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Phillips but only if Phillips has concealed facts relating to such violations. The DOE also reserves the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact material to this Consent Order during the course of the audit or the negotiations that preceded this Consent Order.

VI. Recordkeeping, Reporting and Confidentiality

601. Phillips shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist the DOE in the distribution of the funds paid pursuant to this Consent Order, Phillips also shall maintain, until thirty (30) days after the DOE's final distribution of these funds, sales volume data and customers' names and addresses for the transactions at issue in the January 16, 1987 Proposed Remedial Order. If requested, Phillips shall make such information available to DOE. Except as otherwise provided in this paragraph, upon payment to DOE of the amount set forth in paragraph 404 of this Consent Order, Phillips is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relation to matters covered by this Consent Order.

602. Except for formal requests for information regarding other firms subject to the DOE's information gathering and reporting authority, Phillips will not be subject to any audit requests, report orders, subpoenas, or other administrative discovery by DOE regarding the matters covered by this Consent Order.

603. The DOE will treat the sensitive commercial and financial information provided by Phillips or obtained by DOE in its audit of Phillips as confidential and proprietary and will not disclose such information unless required to do so by law including a request by a duly authorized committee or subcommittee of Congress. If a request or damand for relese of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide Phillips with ten (10) days' actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Phillips' compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, the DOE will make such information available to the Department of Justice (DOJ) in response to a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Phillips may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Phillips and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Phillips (and its successors and assigns) and the DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. The DOE will undertake the defense of the Consent Order, as made effective, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Phillips agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7139, and 10 CFR 205.199B. Phillips hereby waives its right to administrative or judicial review of this Order.

IX. Effective Date

901. This Consent Order shall become effective as a final Order of the DOE upon notice to that effect being published in the **Federal Register.** Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. The DOE will consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Phillips in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred twentieth (120th) day following execution by Phillips, Phillips may, at any time thereafter until the effective date, withdraw its agreement to this Consent Order by written notice to the DOE, in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative, hereby agree to and accept the foregoing Consent Order on behalf of Phillips Petroleum Company.

Jay F. Lapin,

Counsel for Phillips Petroleum Company.

Dated: December 18, 1987.

I, the undersigned, a duly authorized representative of the Department of Energy, hereby agree to and accept the foregoing Consent Order on its behalf.

Marshall A. Staunton,

Administrator, Economic Regulatory Administration, United States Department of Energy.

Dated: December 18, 1987.

[FR Doc. 88-425 Filed 1-8-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-61-NG]

Natural Gas Imports; Great Lakes Gas Transmission Co. and Peoples Natural Gas Co.; Joint Application to Reassign an Import Authorization Without Increasing the Volumes of Natural Gas Imported From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on October 28, 1987, of a joint application from Great Lakes Gas Transmission Company (Great Lakes) and Peoples Natural Gas Company Division of Utilicorp United, Inc. (Peoples) requesting that the volumes of natural gas that Great Lakes is

authorized to import from Canada be reduced by the amount it resells to Peoples, and that Peoples be authorized to import the gas directly. TransCanada PipeLines Limited (TransCanada) would remain the supplier of the gas and Great Lakes would transport it for Peoples. The authorized volumes of natural gas which the applicants seek to transfer from Great Lakes to Peoples is up to 4,052 mcf per day on a firm basis through October 31, 1980. In addition to the volumes transferred from Great Lakes, Peoples seeks authorization to import up to 2,000 Mcf per day of TransCanada overrun volumes over the same term on an interruptible basis for a total in import deliveries of up to 6,052 Mcf per day.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOD Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are to be filed no later than February 10, 1988.

FOR FURTHER INFORMATION CONTACT:

Stanly C. Vass, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–9482

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (FERC) in FERC Docket No. CP–70–100 by order issued April 30, 1970 (43 FPC 653), authorized Great Lakes to import up to 5,000 Mcf per day of Canadian natural gas through October 31, 1990, of which up to 4,052 Mcf per day was authorized for resale to Peoples. For approximately the last two years, Great Lakes has encouraged Peoples and its other resale customers to negotiate pricing arrangements directly with TransCanada. This has resulted in signficantly lower prices and arrangements that include indices which adjust prices in accordance with market conditions. The lower prices have been incorporated into the gas purchase contract between Great Lakes and TransCanada dated October 9, 1970, as amended, under which Great Lakes purchases up to 4,052 mcf per day of natural gas from TransCanda for resale to Peoples. The applicants believe it is in their mutual interest for Peoples to purchase these volumes directly from TransCanada, and for Great Lakes to only provide transportation for these volumes to Peoples. This would allow Peoples more flexibility in future price negotiations and will provide better communication of market signals between Peoples and TransCanada. The authorizations issued to Great Lakes would be modified to eliminate the volumes that Great Lakes is authorized to import from TransCanada for resale to Peoples, and Peoples would be authorized to import the identical volumes directly from TransCanada. In addition to the volumes transferred from Great Lakes, Peoples would import up to 2,000 Mcf per day of natural gas directly from TransCanada on an interruptible basis.

The application included a September 15, 1987, precedent agreement between Great Lakes, Peoples and TransCanada, a proposed gas purchase contract between Peoples and TransCanada, and a proposed transportation service agreement between Great Lakes and Peoples. Effective as of the first day of the month following the receipt of all regulatory and governmental approvals acceptable to the parties, Peoples will import the volumes of gas directly from TransCanada; Great Lakes and Peoples will terminate their existing service agreement; and Great Lakes will transport the Peoples volumes from a point of interconnection between the pipeline systems of TransCanada and Great Lakes to an existing interconnection between the pipeline systems of Great Lakes and Peoples in accordance with a FERC gas tariff. The proposed gas purchase contract has identical pricing provisions to those currently in effect and the contract terms remains the same, ending November 1, 1990. The pricing provisions include a monthly demand charge equal to the sum of the demand tolls of TransCanada and Nova, an Alberta Corporation, except that during the 1987/88 contract year, the monthly demand charge rate shall be equal to $12.8093. The pricing provisions also provide for a commodity charge calculated by subtracting the average daily demand charge for the imported gas from the price charged by Northern Natural Gas Company at a 100 percent load factor for Zone 2. CD–1 firm gas service, in effect on the 15th day of the immediately proceeding month.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicants assert that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., February 10, 1988.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trail-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of this joint application is available for inspection and copying in the Natural Gas Division Docket Room GA-076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 31, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-429 Filed 1-8-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF88-161-000, et al.]

Mid-County Cogeneration Corp., et al. Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment Date: February 10, 1988 in accordance with Standard Paragraph E at the end of this notice.

January 6, 1987.

Take notice that the following filings have been made with the Commission.

1. Mid-County Cogeneration Corporation

[Docket No. QF88-161-000]

On December 18, 1987, Mid-County Cogeneration Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Suffolk County, New York. The facility will consist of two combustion turbine generators, two heat recovery steam generators, and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used for space heating and cooling at the Smith Haven Mall. The net electric power production capacity of the facility will be 54,500 KW. The primary source of energy will be natural gas.

2. Freeport Geothermal Resources Company

[Docket No.QF87-586-001]

On December 15, 1987, Freeport Geothermal Resources Company (Applicant), of 1160 N. Dutton, Suite 200, Santa Rosa, California 95401-4606 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small geothermal power production facility will be located in Lake County, California. The facility will consist of two steam turbine generators, steam wells and other appurtenant facilities. The electric power production capacity will be approximately 20 megawatts. The primary energy source will be geothermal steam. Fuel oil will be used for start-up and unanticipated equipment outage, however, such fossil fuel uses will not exceed 3% of the total energy input to the facility during any calendar year period.

3.Freeport-McMoRan Resource Partners

[Docket No. QF87-587-001]

On December 15, 1987, Freeport-McMoRan Resource Partners, c/o Geysers Geothermal Company, 1160 N. Dutton, Suite 200, Santa Rosa, California 95401-4606 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small geothermal power production facility will be located in Lake County, California. The facility will consist of two steam turbine generators, steam wells and other appurtenant facilities. The electric power production capacity will be approximately 27 megawatts. The primary energy source will be geothermal steam. Fuel oil will be used for start-up and unanticipated equipment outage, however, such fossil fuel uses will not exceed 3% of the total energy input to the facility during any calendar year period.

4. General Electric Credit Corp. (Roxboro Facility)

[Docket No. QF85-147-001]

On December 17, 1987, General Electric Credit Corporation, Cogentrix Carolina Leasing Corporation, Cogentrix Inc., and United States Trust Company of New York, Owner Trustee (Applicants) of 1600 Summer Street, Stamford, Connecticut 06904; Two Parkway Plaza, Suite 290, 4828 Parkway Plaza Boulevard, Charlotte, North Carolina 28217; and 45 Wall Street, New York, New York 10005, respectively submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in Roxboro, North Carolina. The facility consists of three stoker-fired steam generators and an extraction/condensing steam turbine generator. The net electric power production capacity is 53 MW. The primary energy source is coal. Installation of the facility began during the second calendar quarter of 1986.

By order issued on March 11, 1985, the Commission granted certification of the facility as a cogeneration facility (30 FERC ¶ 62,261).

The recertification is requested due to change of ownership from Cogentrix Carolina Leasing Corporation to General Electric Credit Corporation. All other facility's characteristics remain the same.

5. General Electric Credit Corp. (Southport Facility)

[Docket No. QF85-145-002]

On December 17, 1987, General Electric Credit Corporation, Cogentrix Carolina Leasing Corporation, Cogentrix, Inc., and United States Trust Company of New York, Owner Trustee (Applicants) of 1600 Summer Street, Stamford, Connecticut 06904; Two Parkway Plaza, Suite 290, 4828 Parkway Plaza Boulevard, Charlotte, North Carolina 28217; and 45 Wall Street, New York, New York 10005, respectively submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in Southport, North Carolina. The facility consists of six stoker-fired steam generators and two extraction/condensing turbine generators. The net electric power production capacity is 93.9 MW. The primary energy source is coal. Installation of the facility began during the second calendar quarter of 1986.

By orders issued on March 11 and July 26, 1985, the Commission granted certification and recertification of the facility as a qualifying cogeneration facility (30 FERC ¶ 62,263 and 32 FERC ¶ 62,233).

The recertification is requested due to change of ownership from Cogentrix Carolina Leasing Corporation, to General Electric Credit Corporation. All other facility characteristics remain the same.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-385 Filed 1-8-88; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-807-DR]

Major Disaster and Related Determinations; Arkansas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA-807-DR), dated December 31, 1987, and related determinations.

DATED: December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that, in a letter dated December 31, 1987, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Arkansas from severe storms and flooding beginning December 24, 1987, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288. I, therefore, declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Your are authorized to provide Individual Assistance in the affected areas. Your are also authorized to provide Public Assistance in the affected areas, if requested and necessary, and an acceptable State commitment for these purposes is provided. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated areas.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Robert D. Broussard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Arkansas to have been affected adversely by this declared major disaster:

Crittenden County for Individual Assistance.

Robert H. Morris,

Deputy Director, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

[FR Doc. 88-384 Filed 1-8-88; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

First Commerce Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 29, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Commerce Corporation,* New Orleans, Louisiana; to merge with First Commercial Bancshares, Inc., Chalmette, Louisiana, and thereby indirectly acquire First National Bank of St. Bernard Parish, Arabi, Louisiana, and Commercial Bank & Trust Company, Metairie, Louisiana.

B. **Federal Reserve Bank of St. Louis** (Randall C. Summer, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers Bancshares, Inc.,* Valmeyer, Illinois; to acquire at least 80.4 percent of the voting shares of State Bank of Breese, Breese, Illinois.

2. *Homestate Bancorp, Inc.,* Indianapolis, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Salem Bancorp, Inc., Salem, Indiana, and thereby indirectly acquire The State Bank of Salem, Salem, Indiana.

Board of Governors of the Federal Reserve System, January 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-389 Filed 1-8-88; 8:45 am]

BILLING CODE 6210-01-M

First Tennessee National Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of

Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specfically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 29, 1988.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Tennessee National Corporation*, Memphis, Tennessee; to acquire 11.1 percent of GulfNet, Inc., New Orleans, Louisiana, a joint venture engaged in data processing and data transmission activities pursuant to § 225.25(b)(7) of the Board's Regulation Y. GulfNet, Inc. conducts such activities within the Southern United States.

Board of Governors of the Federal Reserve System, January 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-390 Filed 1-8-88; 8:45 am]

BILLING CODE 6210-01-M

Thomas J. McCracken; Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 26, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Thomas J. McCracken*, Hinsdale, Illinois; to acquire 20.9 percent of the voting shares of Frankford Financial Corp., Chicago, Illinois, and thereby indirectly acquire DuPage National Bank, West Chicago, Illinois.

Board of Governors of the Federal Reserve System, January 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-391 Filed 1-8-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0380]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 4,4′-diamino-[1,1′-bianthracene]-9,9′,10,10′-tetrone as a colorant in food-contact polymers.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4024) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.3297 *Colorants for polymers* (21 CFR 178.3297) be amended to provide for the safe use of 4, 4′-diamino-[1,1′-bianthracene]-9,9′,10,10′-tetrone as a colorant in food-contact polymers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 29, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-382 Filed 1-8-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87F-0384]

Kuraray Co., Ltd; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the Kuraray Co., Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of bis(benzoate-0)(2-propanolato)aluminum as a component of adhesives used in the manufacture of multilayer containers intended to contact food.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-355), Food and Drug Administration, 200 C Street SW., Washington, DC 20204. 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4035) has been filed by Kuraray Co., Ltd., 12-39 Umeda, 1-Chome, Kita-ku, Osaka, 530, Japan, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of bis(benzoate-0)(2-propanolato)aluminum as a component of adhesives used in the manufacture of multilayer containers intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the

Federal Register in accordance with 21 CFR 25.40(c).

Dated: December 29, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-383 Filed 1-8-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing; Reconsideration of Disapproval of Texas State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on February 17, 1988 in Dallas, Texas to reconsider our decision to disapprove Texas State Plan Amendment 86-14.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by January 26, 1988.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a Texas State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Texas SPA 86-14 violates section 1902(a)(4) and 1902(a)(19) of the Social Security Act and implementing regulations at 42 CFR Part 434, Subpart C and Part 447, Subpart D.

Texas SPA 86-14 would allow coverage of personal care services in a personal care home/institution by removing the existing exclusion of such coverage from the State plan. The purpose of removing this exclusion is to allow Medicaid funding of personal care services furnished under a prepaid health plan (PHP) to Medicaid recipients in residential care facilities, under Texas' Residential Care Program (RCP).

Federal regulations at 45 CFR 201.2 require a State plan to include all information necessary to determine whether the plan can be approved. Although the amendment material submitted simply proposes to delete the existing reference to personal care home/institutions as an excluded setting for personal care coverage, the actual purpose of this amendment is to permit Medicaid coverage of personal care services under Texas' RCP, as described in the Texas Register. Thus, in order to approve the amendment, it is necessary to establish that the RCP is consistent with Medicaid statutory and regulatory requirements. In those areas where the RCP's provisions create doubt as to whether they meet these Medicaid requirements, HCFA does not believe that the State plan preprint's general assurances about meeting these requirements can be accepted as sufficient in themselves. Rather, HCFA believes the State in this situation must specifically establish that the questionable provisions of the RCP satisfy Medicaid requirements before the amendment can be approved.

Section 1902(a)(4) of the Act provides, in part, that a State plan must provide such methods of administration as the Secretary finds are necessary for the proper and efficient operation of the plan. Implementing regulations at 42 CFR Part 434 describe requirements for PHPs, including the requirement that the contract be on either a risk or a nonrisk basis. HCFA is unable to determine whether the proposed PHPs would operate on a risk or a nonrisk basis, and whether the applicable upper payment limit requirements (42 CFR 447.361 for risk-based contracts and 42 CFR 447.362 for nonrisk-based contracts) would be satisfied.

HCFA also believes that the Texas RCP raises a serious question about the appropriateness of Medicaid funding for personal care services when furnished in an institutional setting that is not subject to the Medicaid health and safety standards for institutional care, prescribed at 42 CFR Part 442, Subpart E. As described in the RCP, the room and board furnished to Medicaid recipients by the facility, along with the personal care services that would be funded by Medicaid, would add up to a level of institutional care which meets that of intermediate care facility (ICF) services; i.e., institutional care "above the level of room and board" to individuals who do not require the care of a hospital or skilled nursing facility (section 1905(c) of the Act and regulations at 42 CFR 440.150(a)). Thus, the State's proposal would enable it, in effect, to provide ICF-level institutional care that is not subject to the Medicaid ICF health and safety requirements. HCFA has determined this is inconsistent with section 1902(a)(19) of the Act, which requires care and services to be provided in a manner consistent with the best interests of the recipients.

The notice to Texas announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Mr. Marlin W. Johnston,
Commissioner, Texas Department of Human Services, P.O. Box 2960, Austin, Texas 78769.

Dear Mr. Johnston: This is to advise you that your request for reconsideration of the decision to disapprove Texas State Plan Amendment 86-14 was received on December 3, 1987.

Texas SPA 86-14 would allow coverage of personal care servcies in personal care homes/institutions by removing the existing exclusion of such coverage from the State plan. The purpose of removing this exclusion is to allow Medicaid funding of personal care services furnished under a prepaid health plan (PHP) to Medicaid recipients in residential care facilities, under Texas' Residential Care Program.

You have requested a reconsideration of whether the plan amendment conforms to the requirements for approval under the Social Security Act and pertinent Federal regulations. There are three issues to be considered at the hearing. The first issue is whether the plan violates section 1902(a)(4) of the Social Security Act which provides, in part, that a State plan must provide such methods of administration as the Secretary finds are necessary for the proper and efficient operation of the plan. The second issue is whether the State has established that the proposed PHPs would operate on a risk or a nonrisk basis as required by 42 CFR Part 434 and whether the applicable upper payment limit requirements at 42 CFR 447.361 for risk-based contracts, and 42 CFR 447.362 for nonrisk-based contracts, would be satisfied. The third issue is whether the State's proposal would enable it to provide ICF-level institutional care that is not subject to the Medicaid ICF health and safety requirements thereby violating section 1902(a)(19) of the Act, which requires care and services to be provided in a manner consistent with the best interest of the recipient.

I am scheduling a hearing on your request to be held on February 17, 1988 at 10:00 a.m., in Room 1950, 12 Main Tower Building, Dallas, Texas. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Stanley Krostar as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely,

William L. Roper, M.D.,

Administrator.

(Section 1116, Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: December 29, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-432 Filed 1-8-88; 8:45 am]

BILLING CODE 4120-03-M

Office of Human Development Services

President's Committee on Mental Retardation; Meeting

Agency Holding the Meeting: President's Committee on Mental Retardation.

Time and Date: Executive Committee—Sunday, January 31, 1988; 1:00 p.m.-5:00 p.m., Full Committee, February 1-2, 1988; 9:00 a.m.-5:00 p.m., February 1, 1988; 9:00 a.m.-5:00 p.m., February 2, 1988.

Presidential Forum: Citizens with Mental Retardation and Community Integration—February 3-5, 1988, 9:00 a.m.-5:00 p.m., Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters To Be Considered: Reports by members of the Executive Committee of the President's Committee on Mental Retardation (PCMR) will be given. The Committee plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

The PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons who are mentally retarded; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect the mentally retarded.

Contact Person for More Information: Vivian B. Levin, 330 Independence Avenue SW., Room 4725—North Building, Washington, DC 20201, (202) 245-7634.

Date: January 5, 1988.

Vivian B. Levin,

Executive Director, PCMR.

[FR Doc. 88-431 Filed 1-8-88; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

National Committee on Vital and Health Statistics Subcommittee on Ambulatory Care Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Ambulatory Care Statistics (formerly the Subcommittee on Statistical Aspects of Physician Payment Systems) established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Monday, January 11, 1988 from 1:00 p.m. to 5:00 p.m. and on Tuesday, January 12, 1988 from 9:00 a.m. to 5:00 p.m. in Room 703A of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

The Subcommittee will receive updates from the Health Care Financing Administration on Monday afternoon and will discuss and receive testimony on the Uniform Ambulatory Medical Care Minimum Data Set on Tuesday.

Further information regarding this meeting of the Subcommittee may be obtained by contacting Marjorie Greenberg, National Center for Health Statistics, Room 2-12, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7142.

Date: December 17, 1987.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 88-473 Filed 1-8-88; 8:45 am]

BILLING CODE 4160-17

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-88-1765; FR-2429]

Computer Automation of Data for Certification, Recertification and Subsidy Billing for Multifamily Subsidized Projects

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development (HUD), has developed, and is making available, specifications and formats for use by software vendors and project owners in automating the following forms: (1) Forms HUD-50059, Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures; (2) Form HUD-52670, Housing Owner's Certification and Application for Housing Assistance Payments; and (3) Form HUD-52670A, Schedule of Tenant Assistance Payments Due. These forms are used in the following subsidy programs: Section 8 Housing Assistance Payments Programs, Section 236 Rental Assistance Payments, Section 221(d)(5) Below Market Interest Rate Housing for Low and Moderate Income Mortgage Insurance, and Section 101 Rent Supplements.

EFFECTIVE DATE: January 11, 1988.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, 451 Seventh Street SW., Room 6182, Washington, DC 20410, (202) 426-3970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In 1983 and 1985, legislative changes were made which significantly changed and complicated tenant rent calculations. Therefore, HUD has encouraged automation of the Form HUD-50059, the Form HUD-52670, and the Form HUD-52670A. Automation is necessary because these forms have become a burden both to HUD and to project owners and managers. The burden results from the time-consuming task of completing the calculations and computations and of reviewing the forms to verify the accuracy and completeness of the information.

The Department has now completed the development of the minimum standards for automating the Form

HUD-50059, the Form HUD-52670, and Form HUD-52670A. Software vendors or individuals interested in receiving a copy of these standards may request a copy by writing to James J. Tahash, Director, Planning and Procedures Division, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6182, Washington, DC 20410.

Other Information

HUD regulations in 24 CFR Part 50, implementing section 102(2)(C) of the National Environmental Policy Act 1969, contain a categorical exclusion from their requirements for the actions, activities and programs specified in § 50.20. Since the minimum standards made available through this Notice are within the exclusion set forth in § 50.20(K)(1), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Income Housing Assistance Program (Section 8).

Dated: December 31, 1987.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88-448 Filed 1-8-88; 8:45 am]

BILLING CODE 4210-27-M

Office of the Regional Administrator—Regional Housing Commissioner

[Docket No. D-88-869]

Designation for Coral Gables Office; Acting Manager, Region IV (Atlanta)

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Coral Gables Office.

EFFECTIVE DATE: December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Henry E. Rollins, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 634, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303-3388, 404-331-5199.

Designation of Acting Manager for Coral Gables Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Manager
2. Chief, Valuation Branch
3. Chief, Loan Management Branch
4. Chief, Property Disposition Branch
5. Chief, Mortgage Credit Branch

This designation supersedes the designation effective March 30, 1987 (52 FR 17480, May 8, 1987).

(Delegation of Authority by the Secretary effective October 1, 1970) (36 FR 3389, February 23, 1971)).

This designation shall be effective as of December 31, 1987.

Ledford L. Austin,

Acting Manager, Coral Gables Office.

Raymond A. Harris,

Regional Administrator, Regional Housing Commissioner, Office of the Regional Administrator.

[FR Doc. 88-449 Filed 1-8-88; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

National Park Service

Information Collection Submitted for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, DC 20503, telephone 202-395-7340.

Title: Park Use Surveys.

Abstract: Surveys will be used for operational, planning and management activities designed to respond to actual public use activities and needs.

Bureau Form Number: 10-157B.

Frequency: Seasonal (4 Times A Year).

Description of Respondents: Individuals or households.

Annual Responses: 9000.

Annual Burden Hours: 2750.

Bureau Clearance Officer: Russell K. Olsen, 523-5133.

Russell K. Olsen,

Information Collection Clearance Officer.

[FR Doc. 88-423 Filed 1-8-88; 8:45 am]

BILLING CODE 4310-70-M

Intention to Negotiate Concession Contract; Lake Mead Ferry Services, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Lake Mead Ferry Services, Inc. authorizing it to continue to provide scheduled and unscheduled sightseeing or tourboat and group charter facilities and services for the public at Lake Mead National Recreation Area, for a period of fifteen (15) years from the date of execution through September 30, 2003.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on September 30, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the thirtieth (30th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Stanley T. Albright,

Regional Director, Western Region.

Date: October 29, 1987.

[FR Doc. 88-424 Filed 1-8-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31205]

FRVR Corp.; Exemption To Acquire and Operate Certain Lines of the Chicago and North Western Transportation Co.

FRVR Corporation (FRVR) and Chicago and North Western Transportation Company (CNW) have filed a notice of exemption for FRVR, a non-carrier, to acquire and operate CNW's so-called "Duck Creek South" lines between Green Bay and Milwaukee, WI. FRVR will also acquire certain incidental trackage rights from CNW lines between Granville, WI, and CNW's Butler Yard in Milwaukee for purposes of interchanging traffic. The actual lines to be acquired and the lines subject to the trackage rights agreement are described as follows: [1]

Segment	Mileposts	Miles
Mainline		
Lines to be acquired by FRVR:		
Duck Creek to Green Bay	4.00 to 0.00	4.00
Green Bay to Tavil	243.05 to 241.95	1.10
Tavil to a point south of Cleveland.	113.60 to 62.285	51.315
Tavil to Fond du Lac	241.95 to 176.70	65.25
Fond du Lac to Granville	146.40 to 99.50	46.90
Oshkosh to N. Oshkosh	22.30 to 20.10	2.20
Total Mainline		170.765
Branch Lines		
Kimberly	121.60 to 112.30	9.30
New London	121.40 to 140.65	19.25
Two River Spur	76.30 to 78.53	2.23
	A1.08 to A7.50	6.42
Total Branch Lines		37.20
Total of Mainline and Branch Lines to be Acquired.		207.965
Lines over which FRVR will have trackage rights:		
Granville to Butler Yard	99.48 to 92.34	7.14
	17.90 to 14.50	3.40
	13.39 to 8.64	4.75
Total Trackage Rights to be Acquired.		15.29

CNW will retain the right to move locomotives and empty equipment over the above-described lines. Upon consummation, FRVR will become a carrier; a transaction relating to the control of FRVR is the subject of a petition for exemption filed December 24, 1987, in Finance Docket No. 31206. Any comments must be filed with the Commission and served on:

Thomas J. Byrne, Carl V. Lyon, 1101 30th Street NW., Suite 302, Washington, DC 20007

Fritz R. Kahn, L. John Osborn, William C. Evans, Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, 1660 L Street NW., Suite 1000, Washington, DC 20036

FRVR and CNW have included in their notice of exemption a request that the Commission clarify its jurisdiction over labor issues arising out of transactions such as that involved here. FRVR and CNW have stipulated that they will not consummate the transaction until the Commission has had an opportunity to receive and review any comments filed in response to their request for clarification. FRVR and CNW state that they have served copies of their notice, including their request for clarification, on labor representatives and that they have asked for comments within the 20-day period permitted by 49 CFR 1104.13(a), which in this case expires January 12, 1988. If a decision on their request for clarification is not expeditiously issued, FRVR and CNW will consummate the transaction on not less than 7 days' notice. A subsequent decision on the merits of the request for clarification will be issued as expeditiously as possible.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 31, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-406 Filed 1-8-88; 8:45 am]

BILLING CODE 7035-01-M

[1] Some of the lines and trackage right being acquired are located in different subdivisions of the railroad. Thus, the same point will have two milepost designations, as shown below:

(1) Milepost 176.70 on the Tavil-Fond du Lac segment is the same as Milepost 146.40 on the Fond du Lac-Granville segment.

(2) Milepost 78.53 is the same as Milepost A1.08.

(3) Milepost 92.34 is the same as Milepost 17.90, and Milepost 14.50 is the same as Milepost 13.30.

[Finance Docket No. 31193]

Hampton & Branchville Railroad Co., Inc., and Colleton County Railroad Co., Inc.; Merger Exemption

Hampton & Branchville Railroad Company, Inc. (H&B), and Colleton County Railroad Company, Inc. (CCR) have filed a notice of exemption for the merger of CCR into H&B. The merger will be effective on or about January 1, 1988. H&B and CCR are under the common control of W. Norris Lightsey (Lightsey) and the South Carolina National Bank, the Trustee of the Estate of E. Oswald Lightsey (the Estate). Lightsey and the Estate own 100 percent of the stock of H&B and CCR in equal percentages.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The merger of the two separate carrier entities into a single carrier entity will permit the carriers to improve present efficiency of operations and services, as well as to simplify H&B's corporate structure.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.[1]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Kimberly A. Madigan; Weiner, McCaffrey, Brodsky & Kaplan, P.C.; 1350 New York Avenue, NW., Suite 800; Washington, DC 20005-4797.

Decided: December 30, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-407 Filed 1-8-88; 8:45 am]

BILLING CODE 7035-01-M

[1] The Railway Labor Executives' Association filed a request for labor protection. Since this transaction involves an exemption from 49 U.S.C. 11343, the imposition of the labor protective condition is mandatory.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Ad Hoc Challenge III Artistry Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Ad Hoc Challenge III Artistry Committee to the National Council on the Arts, will be held on January 27, 1988, from 9:00 a.m.-5:30 p.m. in room MO-7 of the Nancy

Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

January 4, 1988.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-379 Filed 1-8-88; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for the Office of Management and Budget Approval

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G., Fleming (202) 357-9520.

OMB Desk Officer: Jim Houser, (202) 395-3084.

Title: Survey of 1977-1982 NSF Small Business Innovation Research Program Grantees.

Affected Public: Small businesses or organizations.

Number of Responses: 300 responses; total of 90 hours.

Abstract: The cohort of the 1977-1982 NSF/SBIR grantees to be sampled is unique to the Foundation, predating the 1982 SBIR Act, with 5 to 10 years of experience with the Foundation's private sector follow-on commitment requirement. NSF needs the data on private sector leverage, financing, employment, and commercial products for program assessment.

Dated: January 6, 1988.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 88-387 Filed 1-8-88; 8:45 am]

BILLING CODE 7555-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25242; File Nos. SR-CBOE-87-55; SR-Amex 87-09]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; American Stock Exchange, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Changes

On December 9 and 10, 1987, the Chicago Board Options Exchange, Inc. ("CBOE") and the American Stock Exchange, Inc. ("AMEX"), submitted, respectively, to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] proposed rule changes to extend the market index option escrow receipt pilot program until June 30, 1988.

In August 1985, the Commission approved a one-year pilot program to permit the use of cash, cash equivalents, one or more qualified securities, or a combination of the foregoing, as collateral for escrow receipts issued to cover short call positions in broad-based stock index options.[3] The pilot was to end on August 19, 1986 but was initially extended until February 20, 1987 to provide sufficient time for the CBOE to review the data compiled during the original pilot period.[4] On February 6, 1987 the CBOE submitted a report to the Commission and requested that the pilot be extended until June 30, 1987 in order to give the Commission sufficient time to review and evaluate the report. The pilot was subsequently extended until December 31, 1987 to allow additional time for Commission review of the CBOE report.[5]

The proposed rule changes are designed to amend the previously filed rule changes respecting extension of the pilot program and to provide a workable mechanism through which index call options could be written in a cash account.

The Commission finds that the proposed rule changes to extend the operation of the index option escrow receipt program through June 30, 1988, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchanges, and, in particular, the requirements of section 6, and the rules and regulations thereunder. The pilot program extension is consistent with the Act because it will enable continuation of a program designed to reduce operational difficulties of banks and trust companies while the Commission evaluates the program's effectiveness. In addition, the Commission will have the opportunity to assess the program's operation during the October market events before determining whether to make the program permanent.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** because the pilot was previously approved by the Commission, no adverse comments have been received regarding its operation, and the extension will allow for uninterrupted continuation of the program.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of each exchange's filing also will be available for inspection and copying at the principal office of the respective exchange. All submissions should refer to the file numbers in the caption above and should be submitted by February 1, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[6] that the proposal to extend the operation of the pilot through June 30, 1988, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

Dated: January 5, 1988.

[FR Doc. 88-439 Filed 1-8-88; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1986).

[3] *See* Securities Exchange Act Release No. 22323 (August 13, 1985) 50 FR 33439 for a description of the pilot.

[4] *See* Securities Exchange Act Release No. 23552 (August 25, 1986) 51 FR 31183.

[5] *See* Securities Exchange Act Release No. 24708 (July 15, 1987) 52 FR 27604.

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30-3(a)(12) (1986).

[Release No. 34-25241; File No. SR-MSE-87-14]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Incorporated relating to the withdrawal of the Mandatory Posting Rule.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 9, 1987 the Midwest Stock Exchange, Incorporated ("MSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Article XXX, Rule 1.01(I)(6)(c) of the Rules of the Midwest Stock Exchange, Incorporated is hereby amended as follows:

Additions Underscored—[Deletions Bracketed].

6. Unsatisfactory Performance Action.

(a) No change in text.

(b) No change in text.

[(c) Mandatory Posting Semi-annually the Exchange's market share for the previous six-month period (calculated as a percentage of the number of trades reported to the consolidated tape) in each security for which there is a registered specialist shall be compared with the market shares of the other market centers trading that security. If during any such period the Exchange's market share in any such security is less than the third largest and also less than the Exchange's average market share for all issues for which there is a registered specialist, that security shall be promptly posted for applications in accordance with the provisions of Article XXX, Rule 1.01.II, provided, however, that no security shall be posted unless the specialist in that security has been registered as such for six months or more; and provided further, that, although all qualified co-specialists, including the current co-specialist, may apply, when considering the factors specified in Article XXX, Rule 1.01.III, the Committee will give preference to a designated co-specialist, who, during the period, was not a co-specialist in any security that is being posted at that time pursuant to this Rule. Until such time as greater experience is gained in evaluating performance of specialists effecting transactions in NASDAQ/NMS Securities, such securities will not be subject to the requirements of this subsection (c).]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article XXX, Rule 1.01(I)(6)(c) (Mandatory Posting) of the Exchange Rules requires the Exchange to post, for applications, any security for which the Exchange's market share (determined as a percentage of number of trades reported to the consolidated tape) is less than the third largest and is also less than the Exchange's average market share for all specialist-assigned issues for the previous six-month period. The Exchange has determined to withdraw this rule in its entirety.

In previous filings, SR-MSE-87-1 and SR-MSE-87-9,[1] the Exchange requested the ability to suspend the application of the Mandatory Posting Rule for the periods 1/1/86 through 12/31/86 and 1/1/87 through 6/30/87 respectively. Such suspensions were deemed appropriate in order to allow the Exchange adequate time to develop a set of alternative co-specialist evaluation criteria due, in part, to structural changes taking place in the industry after 1985 with the growth of large retail firms functioning as specialists on other exchanges. The Exchange's Floor Procedure Committee and Committee on Specialist Assignment and Evaluation have labored over this project for many months and it is now near completion. This progress can be seen, in part, with the filing of the revised Co-Specialist Evaluation Questionnaire.[2] The new Questionnaire represents an integral portion of a package of new criteria to evaluate co-specialist performance which will soon be submitted for Commission approval.

[1] *See*, Securities Exchange Act Rel. Nos. 24444 (May 12, 1987) 52 FR 19002 and 24892 (September 9, 1987) 52 FR 35018, respectively.

[2] *See*, SR-MSE-87-13.

The proposed rule change is consistent with Section 6 of the Act in that it will promote just and equitable principles of trade by assisting in the measurement of co-specialist performance, thereby helping to ensure that co-specialists meet certain minimum standards.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange's Floor Procedure Committee has recommended that the Mandatory Posting Rule be withdrawn.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve the proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to the file number in the caption above and should be submitted by February 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 440 Filed 1-8-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2303]

Arkansas; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on December 31, 1987 I find that Crittenden County in the State of Arkansas constitutes a disaster loan area because of damage from severe storms and flooding beginning on December 24, 1987. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on March 3, 1988 and for economic injury until the close of business on October 3, 1988 at: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051 or other locally announced locations.

The interest rates are:

Homeowners with Credit Available Elsewhere	8.000%
Homeowners without Credit Available Elsewhere	4.000%
Businesses with Credit Available Elsewhere	8.000%
Businesses without Credit Available Elsewhere	4.000%
Businesses (EIDL) without Credit Available Elsewhere	4.000%
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	9.000%

The number assigned to this disaster is 230306 for physical damage and for economic injury the number is 658900.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: January 5, 1988.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-394 Filed 1-8-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/15-5024]

Motor Enterprises, Inc.; Application for Conflict of Interest Transaction

Notice is hereby given that Motor Enterprises, Inc. (MEI), 3044 West Grand Boulevard, Detroit, Michigan 48202, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b)(1) of the Regulations governing small business investment companies (13 CFR 107.903(b)(1) (1987)) for an exemption from the provisions of the cited Regulations.

MEI proposes to loan $25,000 to The Donut Factory, 16651 Livernois Avenue, Detroit, Michigan 48221.

The proposed financing is brought within the preview of § 107.903(b)(1) of the Regulations because the owner of The Donut Factory, Mr. Douglas C. Venable, is the son of Mr. Abraham S. Venable, a Vice President and Director of MEI. Both are therefore Associates of MEI under § 107.3 of the Regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Detroit, Michigan.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: January 4, 1988.

[FR Doc. 88-395 Filed 1-8-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Supbart Q during the Week Ended December 31, 1987

The following applications for certificates of public cononvenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modiry scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44608

Date Filed: December 31, 1987.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 28, 1988.

Description: Amendment No. 1 to the Application of the Flying Tiger Line Inc. amends its application as follows: "4. Flying Tigers hereby applies for a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of property and mail between the coterminal points Columbus, Ohio (to be served through Rickenbacker Airport) and Detroit and Flint, Michigan, on the one hand, and Toronto, Ontario, Canada, on the other hand, subject to such terms, conditions, and limitations as the Department may find to be consistent with the public convenience and necessity."

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 88-393 Filed 1-8-88; 8:45 am]

BILLING CODE 4910-62-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the

OMB Desk Officer within 30 days of this notice.

Dated: December 31, 1987.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Revision

1. Department of Veterans Benefits.
2. Application for Designation as Management Broker.
3. VA Form 26–6685.
4. This information is used to utilize the services of local brokers in the sale and management of VA-owned properties.
5. On occasion.
6. Individuals or households.
7. 250 responses.
8. 63 hours.
9. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Monthly Certification of On-the-Job and Apprenticeship Training.
3. VA Form 22–6553d.
4. This information is used to determine the amount of benefits payable to the veteran or eligible person who is pursuing apprenticeship and other on-the-training.
5. Monthly.
6. Individuals or households; State of local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Nonprofit institutions; and Small businesses or organizations.
7. 223,981 responses.
8. 37,330 hours.
9. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Vocational Traninig Applications for VA Pensioners (Chapter 15, Title 38, U.S.C.)
3. VA Form 28–9866.
4. This form is the initial source of information to evaluate a veteran's claim for these benefits.
5. On occasion.
6. Individuals or households.
7. 2,500 responses.
8. 500 hours.
9. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Application for Educational Assistance Test Program Benefits (Section 901, PL 96–342).
3. VA Form 22–8889.
4. This information is used to determine eligibility and entitlement to educational assistance benefits.
5. On occasion.
6. Individuals or households.
7. 800 responses.
8. 400 hours.
9. Not applicable.

[FR Doc. 88–422 Filed 1–8–88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 6
Monday, January 11, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

January 7, 1988.

PLACE: 1121 Vermont Avenue NW., Room 512, Washington, DC 20425.

DATE AND TIME: Friday, January 15, 1988, 9:30 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. A Media View of Civil Rights: Present and Future
IV. Commission Appropriation for FY '88
V. Planning for '90: Reorganization of Commission

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376–8105.

William H. Gillers,
Solicitor, 376–8514.

[FR Doc. 88-508 Filed 1-7-88; 2:50 p.m.]

BILLING CODE 6335-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, January 5, 1988.

LOCATION: Room 440, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement Matter OS#4964

The staff will brief the Commission on issues related to Enforcement Matter OS#4964.

*The Commission decided by unanimous vote that agency business required scheduling this meeting without the normal advance notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue Bethesda, MD 20207 301–492–6800.

January 7, 1988.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 88-517 Filed 1-7-88; 3:24 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, January 13, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westband Avenue, Bethesda, MD.

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public

1. FY 89 Budget

The Commission will consider issues related to the budget for fiscal year 1989.

2. Status, Briefing, Chemical Program

The staff will brief the Commission on the progress being made on various projects within the Chemical Hazards Program.

Closed to the Public

3. Enforcement Matter OS#3320

The staff will brief the Commission on issues related to enforcement matter OSt3320.

*Agenda revised 1/7/88 to delete previous item 1 concerning fire toxicity and to add new item 1 concerning the FY 89 Budget.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, MD 20207, 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.

January 7, 1988.

[FR Doc. 88-518 Filed 1-7-88; 3:24 pm]

BILLING CODE 6355-01-M

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 12, 1988 from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 (703) 883–4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). The matters to be considered at the meeting are:

1. Revoking Charter of Farm Credit System Capital Corporation; and
2. Approve Documents to Charter the Farm Credit System Assistance Board.

Dated: January 7, 1988.

David A. Hill,
Secretary, Farm Credit Administration Board.

[FR Doc. 88-479 Filed 1-7-88; 1:25 pm]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, January 5, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Report of the Director, Office of Corporate Audits and Internal Investigations:
Audit Report re: Audit of Loan Management and Liquidation—DOL Denver, Consolidated Office (Memo dated December 3, 1987)

Application of The Glen Burnie Mutual Savings Bank, an operating non-FDIC-insured savings bank located at 1 Crain Highway, S.E., Glen Burnie, Maryland, for Federal deposit insurance.

Application of Columbian Savings Bank, an operating non-FDIC-insured savings bank located at 305 St. John Street, Havre de Grace, Maryland, for Federal deposit insurance.

By the same majority vote, the Board further determined that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: January 6, 1988.

Federal Deposit Insurance Corporation.
Margaret M. Olsen,
Deputy Executive Secretary.
[FR Doc. 88-453 Filed 1-7-88; 9:12 am]
BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 87-30182.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, January 7, 1988, 10:00 a.m.

CHANGE IN MEETING: The open meeting scheduled for this date was cancelled.

FEDERAL REGISTER NO.: 88-312.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, January 14, 1988, 10:00 a.m.

THE FOLLOWING ITEM WAS WITHDRAWN FROM THE AGENDA AND WILL BE CONSIDERED ON JANUARY 21: Draft Revisions to the Affiliation and Earmarking Regulations (11 CFR 110.3-110.6).

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 88-500 Filed 1-7-88; 2:36 pm]
BILLING CODE 6715-01-M

FEDERAL ENGERGY REGULATORY COMMISSION

January 6, 1988.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

TIME AND DATE: January 13, 1988, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 869th Meeting—January 13, 1988 Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 8924-002, Northeast Hydrodevelopment Corporation
CAP-2.
Project No. 5915-004, White Chuck Water Company
CAP-3.
Project No. UL30-87-001, Kirkway Electric Corporation
CAP-4.
Project No. 9167-009, Pennsylvania Hydroelectric Development Corporation
CAP-5.
Project No. 9694-002, Power Resources Development Corporation
CAP-6.
Project No. 8488-003, Cosumnes River Water and Power Authority
CAP-7.
Project No. 9167-007, Pennsylvania Hydroelectric Development Corporation
CAP-8.
Project Nos. 5376-002 and 003, Boise Cascade Corporation
CAP-9.
Omitted
CAP-10.
Project No. 3295-008, East Columbia Basin Irrigation District, Quincy-Columbia Basin Irrigation District and South Columbia Basin Irrigation District
CAP-11.
Project No. 2849-012, East Columbia Basin Irrigation District, Quincy-Columbia Basin Irrigation District and South Columbia Basin Irrigation District
CAP-12.
Project No. 10425-002, Steven J. Wight
CAP-13.
Project No. 7964-002, JDJ Energy Company
CAP-14.
Project Nos. 8686-001 and 8863-001, Northeast Hydrodevelopment Corporation
CAP-15.
Project No. 9412-001, Calaveras Public Utility District and Middle Fork Ditch Hydro Partners
CAP-16.
Project No. ER81-177-007, Southern California Edison Company
CAP-17.
Project No. ER88-47-001, Southwestern Public Service Company
CAP-18.
Project No. ER86-558-013, Gulf States Utilities Company
CAP-19.
Project No. ER86-684-002, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, GPU Service Corporation and Niagara Mohawk Power Corporation
CAP-20.
Project No. ER87-386-001, New England Hydro-Transmission Corporation, New England Hydro-Transmission Electric Company, Inc., New England Power Company, Public Service Company of New Hampshire and Boston Edison Company
CAP-21.
Project No. ER87-387-001, Pennsylvania Power & Light Company
CAP-22.
Project Nos. ER85-424-000, ER85-425-000, ER85-468-001, ER85-534-001, ER85-692-001, ER86-506-001, ER87-115-001, 002, ER87-223-001 and 002, Southwestern Electric Power Company

Consent Miscellaneous Agenda

CAM-1.
Docket No. RM87-21-000, Revision of Freedom of Information Act Rules
CAM-2.
Docket Nos. RM87-3-019 through 020, Annual Charges Under the Omnibus Budget Reconciliation Act of 1986
CAM-3.
Docket No. RM87-34-054, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAM-4.
Docket No. RM79-44-001, West Virginia Department of Energy
CAM-5.
Omitted

Consent Gas Agenda

CAG-1.
Omitted
CAG-2.
Docket No. RP88-40-000, Mountain Fuel Resources, Inc.
CAG-3.
Docket No. RP86-33-000, and RP86-91-000, Midwest Gas Transmission Company
CAG-4.
Docket No. RP85-122-004, Colorado Interstate Gas Company
CAG-5.
Docket No. RP82-80-027, ANR Pipeline Company
CAG-6.
Docket No. RP86-116-014, Panhandle Eastern Pipe Line Company
CAG-7.
Docket No. RP85-125-004, Distrigas of Massachusetts Corporation
CAG-8.
Docket No. RP88-17-002, Southern Natural Gas Company
CAG-9.
Docket No. TA88-2-51-001, Great Lakes Gas Transmission Company
CAG-10.
Docket No. RP87-70-006, East Tennessee Natural Gas Company
CAG-11.
Docket No. TA88-1-45-001, Inter-City Minnesota Pipelines Ltd., Inc.
CAG-12.
Docket Nos. RP86-69-008, TA86-2-15-005, RP82-51-007, RP86-138-004 and GP82-31-003, Mid Louisiana Gas Company
CAG-13.
Docket No. RP85-125-000, Distrigas of Massachusetts Corporation
CAG-14.
Docket No. RP87-86-002, KN Energy, Inc.
CAG-15.
Docket No. RP86-157-002, El Paso Natural Gas Company
CAG-16.
Docket No. RP86-86-001, Sabine Pipe Line Company
CAG-17.
Docket No. RP84-82-002, Tarpon Transmission Company
CAG-18.
Docket No. TA87-5-21-002, 003 and 004, Columbia Gas Transmission Corporation
CAG-19.
Docket Nos. RP82-58-023 and RP82-105-008, Panhandle Eastern Pipe Line Company and Central Illinois Light Company
CAG-20.

Docket No. RP87-72-001, Interstate Power Company v. Natural Gas Pipeline Company of America
CAG-21.
Docket No. TA87-3-22-003, Consolidated Gas Transmission Corporation
CAG-22.
Docket No. RP87-92-001, Williston Basin Interstate Pipeline Company
CAG-23.
Docket No. RP82-55-032, Transcontinental Gas Pipe Line Corporation
CAG-24.
Docket No. RP85-209-000, United Gas Pipe Line Company
CAG-25.
Docket No. IS87-35-001, Gulf Central Pipeline Company
CAG-26.
Docket Nos. TA87-2-30-002, 003 and 004, Trunkline Gas Company
CAG-27.
Docket No. RP87-127-000, Alabama-Tennessee Natural Gas Company
CAG-28(A).
Docket No. CP86-578-000, Northwest Pipeline Corporation
CAG-28(B).
Docket No. RP86-51-000, Northwest Pipeline Corporation
Docket No. RP86-164-000, Mountain Fuel Resources, Inc. v. Northwest Pipeline Corporation
CAG-29.
Omitted
CAG-30.
Omitted
CAG-31.
Docket No. ST81-90-001, Natural Gas Pipeline Company of America
CAG-32.
Docket No. RI82-6-000, ARCO Oil & Gas Company
CAG-33.
Docket Nos. CI86-418-001 and CI86-424-001, El Paso Natural Gas Company
CAG-34.
Docket No. G-4579-044, Cities Service Oil and Gas Corporation (The George R. Brown Partnership)
Docket No. G-4579-045, Mobile Exploration and Producing North America
Docket No. G-4579-046, Texaco Inc. and Texaco Producing Inc.
Docket No. G-4579-047, Cities Service Oil and Gas Corporation (Operator)
Docket No. G-6686-004, Union Texas Petroleum Corporation (Operator)
Docket No. CI86-326-001, Belco Development Corporation
Docket No. CI87-226-001, Enstar Corporation
Docket Nos. CI87-1-002 and CI87-261-001, American Royalty Producing Company (Successor to Partnership Properties Company)
Docket No. CI63-1045-001, Samson Resources Company
Docket No. G-3244-001, Cabot Corporation, *et al.*
Docket No. G-2758-001, Kerr, McGee Corporation
CAG-35.
Omitted
CAG-36.
Omitted
CAG-37.
Docket Nos. CI88-2-000 and CI88-3-000, Texas Eastern Transmission Corporation
CAG-38.
Omitted
CAG-39.
Omitted
CAG-40.
Docket Nos. RP86-116-015 and CP86-585-005, Panhandle Eastern Pipe Line Company
CAG-41.
Docket No. RP87-13-001, The Brooklyn Union Gas Company, Complainant v. Distrigas of Massachusetts Corporation, Respondent
Docket No. RP87-30-001, Boston Gas Company, Complainant v. Distrigas of Massachusetts Corporation, Respondents
CAG-42.
Docket No. RP87-328-001, Northwest Pipeline Corporation
CAG-43.
Docket No. CP87-159-006 and CP87-304-003, Pacific Gas Transmission Company
CAG-44.
Docket Nos. CP87-176-001 and CP63-159-001, Panhandle Eastern Pipe Line Company
CAG-45.
Docket No. RP85-621-006, ANR Pipeline Company
CAG-46.
Docket Nos. CP87-467-001, CP86-474-001, 002, CP86-422-001 and CP86-456-001, Great Lakes Gas Transmission Company
Docket No. CP79-467-014, ANR Pipeline Company
CAG-47.
Omitted
CAG-48.
Docket No. CP87-198-001, Black Marlin Pipeline Company
CAG-49.
Docket No. CP83-335-191, Williston Basin Interstate Pipeline Company
CAG-50.
Docket Nos. CP83-14-123 and 124, Northern Natural Gas Company, Division of Enron Corporation
CAG-51.
Docket No. CP87-106-000, Midwestern Gas Transmission Company
CAG-52.
Docket No. CP87-146-000, West Lincoln Natural Gas District, Applicant and Southern Natural Gas Company, Respondent
CAG-53.
Docket No. CP87-169-000, Texas Eastern Transmission Corporation
CAG-54.
Docket No. CP87-473-000, Carnegie Natural Gas Company
CAG-55.
Docket No. CP87-134-000, Transwestern Pipeline Company
CAG-56.
Docket No. CP87-483-000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG-57.
Docket No. CP87-147-000, El Paso Natural Gas Company
CAG-58.
Docket Nos. CP87-200-000 and CP87-215-000, United Gas Pipe Line Company
CAG-59.
Docket No. CP87-196-007, Transcontinental Gas Pipe Line Corporation
Docket No. CP87-203-006, Consolidated Gas Transmission Corporation and North Penn Gas Company
CAG-60.
Docket No. CP85-824-004, Colorado Interstate Gas Company
CAG-61.
Docket No. CP85-636-005, Northern Natural Gas Company, Division of Enron Corporation
CAG-62.
Docket No. RP85-169-027, Consolidated Gas Transmission Corporation
CAG-63.
Docket No. CP86-676-000, Equitable Gas Company, a Division of Equitable Transmission Company and Equitable Transmission Company

I. Licensed Project Matters

P-1.
Project Nos. 3258-002, 3583-001, 3741-001 and 3742-001, Joseph M. Keating
Project No. 6156-003, Morris M. Zack and Milton M. Zack
Docket No. EL85-19-102; Procedures for Assessing Hydropower Projects Clustered in River Basins. Orders pertaining to the applications for license examined in the Environmental Impact Statement prepared for the Owens River Basin, California.
P-2.
Project No. 6188-001, Camille E. Held, Walton B. Held, A.W. Stuart Trust, W. Titus Nelson, and Dale E. Grenoble
Docket No. EL85-19-102, Procedure for Assessing Hydropower Projects Clustered in River Basins. Orders pertaining to the applications for license examined in the Environmental Impact Statement prepared for the Owens River Basin, California.
P-3.
Project No. 4669-002, John L. Symons
Docket No. EL85-19-102, Procedures for Assessing Hydropower Projects Clustered in River Basins. Orders pertaining to the Applications for license examined in the Environmental Impact Statement prepared for the Owens River Basin, California.

II. Electric Rate Matters

ER-1.
Docket No. ER88-112-000, Orange and Rockland Utilities, Inc. Order on tariff covering purchases from commercial and industrial customers.
ER-2.
Docket Nos. ER85-646-001 and ER85-647-001 (Phase I), ER85-646-005 and ER85-647-003 (Phase II), New England Power Company. Opinion and order determining just and reasonable rates (cancelled plant issues).
ER-3.
Omitted
ER-4.
Docket No. EL87-60-000, Central Illinois Public Service Company. Declaratory order on proposed corporate reorganization.

Miscellaneous Agenda

M-1.
Reserved
M-2.
Reserved
M-3.
Docket No. GP87-42-000, Grynberg Production Company, Jack Grynberg, and Celeste Grynberg, Complainants, v. Mountain Fuel Resources, Inc., Respondent. Order on Complaint.
M-4(A).
Docket No. RM87-16-000, Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated, or Modified Contracts. Final Rule.
M-4(B).
Docket No. CI84-10-006, Felmont Oil Corporation and Essex Offshore, Inc. Order on court remand.
M-4(C).
Docket Nos. CP84-348-005, 006 and 007, Mississippi River Transmission Corporation
Docket No. CP84-183-004, Transcontinental Gas Pipe Line Corporation
Docket Nos. CI86-307-002, 003, CI86-688-002, 003, CI86-689-001 and 002, Sea Robin Pipeline Company. Rehearing of orders authorizing pipeline to cease purchases.
M-4(D).
Docket Nos. CI77-337-002 and G-14227-001, Union Texas Petroleum Corporation. Opinion and order on rehearing. Opinion No. 274-A.

I. Pipeline Rate Matters

RP-1.
Docket No. RP87-16-000, El Paso Natural Gas Company. Opinion on initial decision concerning take-or-pay buyout and buydown cost passthrough mechanism.
RP-2.
Docket Nos. RP86-119-000, TA84-2-9-007 and TA85-1-9-004, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. Order on settlement concerning take-or-pay buyout and buydown cost passthrough mechanism.
RP-3(A).
Docket Nos. RP87-55-000 and TA81-1-21-022, Columbia Gas Transmission Corporation. Order on costs to reform contracts.
RP-3(B).
Docket Nos. TA81-1-21-022, 023, 024, 025, 026 and 027, Columbia Gas Transmission Corporation. Order on remand.

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1.
Docket No. CP86-232-008, Panhandle Eastern Pipe Line Company. Rehearing of order on complaint alleging undue discrimination.
CP-2.
Docket Nos. CP83-75-000, 001 and 002, Consolidated System LNG Company
Docket Nos. CP80-33-001 and 002, Columbia LNG Corporation. Contested settlement of proposal to abandon an undivided one half ownership interest in a liquefied natural gas facility.
CP-3.
Docket Nos. CP86-492-000, CP86-493-000 and CP86-494-000, Moraine Pipeline Company and Natural Gas Pipeline Company of America. Request for optional certificate to construct facilities and transport gas.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-472 Filed 1-7-88; 11:09 am]
BILLING CODE 6717-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of January 11, 1988:

A closed meeting will be held on Tuesday, January 12, 1988, at 2:30 p.m. An open meeting will be held on Thursday, January 14, 1988, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 12, 1988, at 2:30 p.m., will be:

Institution of injunctive action.
Settlement of injunctive action.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Institution of administrative proceeding.

The subject matter of the open meeting scheduled for Thursday, January 14, 1988, at 10:00 a.m., will be:

1. Consideration of whether to issue a Memorandum Opinion and Order with regard to Sierra Pacific Resources ("Resources"), an exempt intrastate holding company under the Public Utility Holding Company Act of 1935, authorizing Resources to acquire a 14.5% common stock interest in a new company that will construct an electric generating unit to sell electric energy at wholesale. For further information, please contact Robert F. McCulloch at (202) 272-7699.

2. Consideration of whether to adopt new rules and amendments to rules and forms relating to advertising by investment companies. For further information, please contact Robert E. Plaze at (202) 272-2107.

3. Consideration of whether to issue two releases that: (1) Adopt a proposal providing for inclusion of a consent to service of process provision on behalf of the Commission and self-regulatory organizations in Form BD, and (2) propose for public comment inclusion of a provision providing for consent to service of process to any application for a protective decree on behalf of the Securities Investor Protection Corporation. For further information, please contact Henry E. Flowers at (202) 272-2848.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin Fogary at (202) 272-3195.

Jonathan G. Katz,
Secretary.
January 5, 1988.
[FR Doc. 88-446 Filed 1-6-88; 5:08 p.m.]
BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Meeting No. 1398

TIME AND DATE: 10 a.m. (e.s.t.), Wednesday, January 13, 1988.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA

Approval of minutes of meeting held on December 16 and 21, 1987.

Discussion Item

1. Report on Existing Industries Program.

Action Items

Old Business

1. Cooperative Agreement with North Atlantic Technologies, Inc. for Cooperation in a Project to Demonstrate an Open Channel Air Preheater Test Program in Support of the 20-MW Hybrid Atmospheric Fluidized Bed Combustion Project.

2. Modification of Fiscal Year 1988 Capital Budget Financed from Power Proceeds and Borrowings—(2.1) Test and Replacement Program for Silicone Cables at the Sequoyah Nuclear Plant; (2.2) Provide Engineering and Related Services in Support of the Integrated Design Inspection for the Emergency Raw Cooling Water System at the Sequoyah Nuclear Plant; (2.3) Civil Engineering Calculation Regeneration Program at the Sequoyah Nuclear Plant; (2.4) Special System Review of the Design, Modification, Testing, and Operation of Emergency Equipment Cooling Water and Residual Heat Removal Systems at Browns Ferry Nuclear Plant; and (2.5) Configuration Management to Provide

Calculations Supporting the Design Basis and Plant Configuration Required at Browns Ferry Nuclear Plant.

New Business

A—Budget and Financing

A1. Modification of Fiscal Year 1988 Capital Budget Financed from Power Proceeds and Borrowings—Replace Existing Telephone System at the Nuclear Plants.

A2. Modification of Fiscal Year 1988 Capital Budget Financed from Power Proceeds and Borrowings—Replace Generator Circuit Breaker and Cables at Ocoee No. 1 Hydro Plant.

B—Purchase Awards

B1. Request for Proposal AB-06700A—Rehabilitation of Existing Insulation, Ductwork, and Precipitator Shell at Bull Run Fossil Plant.

B2. Request for Proposal YD-763262-01—Corporate Data Center Systems Procurement for the ADP Equipment Management Branch.

B3. Negotiation YE-204634—IBM or IBM Compatible Equipment for the ADP Equipment Management Branch.

C—Power Items

* C1. Power Contract with the Aluminum Company of America (ALCOA) for Power Supply to ALCOA's Aluminum Reduction and Fabrication Plants at Alcoa, Tennessee, and an Amendatory Agreement with Tapoco Providing for Eventual Discontinuance of the Primary Exchange of Power and the Replacement of the Existing Settlement Provisions for Exchange Energy Owed TVA.

C2. Power Contract with Tennessee River Pulp & Paper Company Providing for Power Supply for Operation of the Company's Pulp and Paper Mill Near Counce, Tennessee.

C3. Amendment to White Oak Coal Lease (TV-63282A) with Dollar Branch Coal Corporation of Manchester, Kentucky.

C4. Contract No. TV-73571A with the Tennessee Emergency Management Agency Covering Arrangements for Purchase of Equipment Necessary to Implement Radiological Emergency Plans Required by the Nuclear Regulatory Commission and the Federal Emergency Management Agency.

D—Personal Items

* D1. Recommendations for Hourly and Annual Trades and Labor Employees Resulting from Negotiations Between TVA and Tennessee Valley Trades and Labor Council—52nd Annual Wage Conference.

D2. Supplement to Employee Loan Agreement (TV-72614A) with RLG, Inc., Requested by the Office of Nuclear Power.

D3. Supplement to Employee Loan Agreement (TV-71871A) with Seehuus & Hart, Associates, Inc., Requested by the Office of Nuclear Power.

D4. Supplement to Personal Services Contract No. TV-71877A with Shaw, Pittman, Potts & Trowbridge of Washington, DC, for Legal Services, Requested by the Office of the General Counsel.

D5. Supplement to Personal Services Contract No. TV-63868A with Praxis Engineers, Inc., Milpatis, California, for Development of a Coal Preparation Process Control System, Requested by the Office of Power.

E—Real Property Transactions

E1. Sale of a Permanent Easement to Larry J. and Peggy Taylor for an Access Road, Turnaround, and Maintenance of a Mailbox, Affecting 0.1 Acre of Fort Loudoun Reservoir Land in Blount, County, Tennessee—Tract No. XFL-120H.

F—Unclassified

F1. Supplement to Contract (TV-72077A) with U.S. Department of Agriculture, Forest Service, Northeastern Forest Experiment Station, Providing for Conduct of Exposure Experiments at Whitetop Mountain to Determine Cause of Red Spruce Decline in High Elevation of Southern Appalachians.

F2. Supplement to Letter Agreement (TV-69657A) with the Missouri River Division Laboratory, Corps of Engineers, U.S. Department of Army, for Performance of Environmental Laboratory Analyses to Determine Priority Pollutants at Certain Sampling Sites Located in the Missouri River Division of the Corps of Engineers.

F3. Agreement (TV-73595A) with Hawaiian Sugar Planters' Association Providing for Cooperation in the Development and Implementation of Projects Related to Options for Sugar Cane Producers with Respect to Energy.

F4. Revision to TVA Code Relating to Regional Human Resource Development.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: January 6, 1988.

W.F. Willis,

General Manager.

[FR Doc. 88-488 Filed 1-7-88; 1:26 pm]

BILLING CODE 8120-01-M

* This item approved by individual Board members.

This would give formal ratification to the Board's action.

Corrections

Federal Register
Vol. 53, No. 6
Monday, January 11, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E3425/R924; FRL—3305—6]

Pesticide Tolerance for N—(Mercaptomethyl) Phthalimide S—(O,O—Dimethyl Phosphorodithioate)

Correction

In rule document 87-29369 beginning on page 48538 in the issue of Wednesday, December 23, 1987, make the following correction:

§ 180.261 [Corrected]

On page 48539, in the second column, in § 180.261(b), in the table, in the second column, "01" should read "0.1".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 435, 440, and 441

[BERC—513—F]

Medicaid Program; Relations With Other Agencies, Miscellaneous Medicaid Definitions, Third Party Liability Quality Control, and Limitations on Federal Funds for Abortions

Correction

In rule document 87-28903 beginning on page 47926 in the issue of Thursday, December 17, 1987, make the following corrections:

1. On page 47927, in the third column, in the 27th line, "recipient who are" should read "recipients who are not".

2. On page 47931, in the third column, in paragraph (d), in the third line, "Pub. L. 97-272" should read "Pub. L. 96-272".

§ 431.625 [Corrected]

3. On page 47933, in the first column, in § 431.625(a)(1), in the second line, "requests" should read "requires".

§ 435.1009 [Corrected]

4. On page 47934, in § 435.1009, in the first column, in the introductory text, in the fourth line, "physical" should read "physician" and in the second column, in the first line, "insitution" should read "institution".

BILLING CODE 1505-01-D

federal register

Monday
January 11, 1988

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 7 et al.

Federal Acquisition Regulation; Miscellaneous Amendments

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 7, 8, 13, 14, 19, 22, 25, 26, 28, 29, 33, 42, 45, and 52

[Federal Acquisition Circular 84-32]

Federal Acquisition Regulation; Miscellaneous Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-32 amends the Federal Acquisition Regulation (FAR) with respect to the following: A-76 Cost Comparison Public Review Period Revision; Revision to FAR 8.405-1(a); Blanket Purchase Agreement Authorization Lists; Release of Solicitation Mailing Lists; Small Business Size Standards; Revision Regarding Applicability of CWHSSA to FAR 22.305; Reporting Veteran's Employment; Adding Names to Two Countries to the European Economic Community List; Other Socioeconomic Programs; Noncompliance with Bid Guarantee Requirements; Excise Tax Exemptions; GSBCA Jurisdiction; Vists to Contractor Facilities; and Use of Property Clauses in Service Contracts.

EFFECTIVE DATE: January 29, 1988.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

FAC 32, Items, I, II, III, IV, V, VI, VIII, IX, X, XI, XII, XIII, and XIV. The Paperwork Reduction Act (44 U.S.C. 3501, et seq.) does not apply because these final rules do not impose any additional reporting or recordkeeping requirements or collection of information from offerors contractors or members of the public which require the approval of OMB under the Act.

FAC 32, Item VII. OMB has assigned OMB Control No. 1293-0005 to the DOL information collection requirements.

B. Regulatory Flexibility Act

FAC 32, Items I, II, III, IV, V, VI, VIII, IX, X, XI, and XII. Analysis of the proposed revisions indicate that they are not "significant revisions" as defined in FAR 1.501, i.e., they do not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or have significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with 41 U.S.C. 418b pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on the proposed revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) does not apply.

FAC 32, Item VII. In the **Federal Register** on March 4, 1987 (52 FR 6677), the Department of Labor certified that their final rule will not have a "significant economic impact upon a substantial number of small entities" within the meaning of 5 U.S.C. 605(b).

FAC 32, Item XIII. Because the final rule impacts only the Federal Government, the final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and 41 U.S.C. 418b, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR Subpart will be considered in accordance with 5 U.S.C. 610.

FAC 32, Item XIV. The DoD, GSA, and NASA certify that this rule will not have a significant economic impact on a substantial number of small entities as the rule merely relieves contractors of responsibility for Government property under circumstances where the property is located on Government installations and the contractor thereby has less than full control over the property. No comments from small entities were received regarding the Initial Regulatory Flexibility Act Analysis prepared for the proposed rule and published in the **Federal Register** on February 21, 1986 (51 FR 6360). A final Regulatory Flexibility Analysis has been prepared and is on file in the Office of the FAR Secretariat.

C. Public Comments

FAC 32, Item IV. A proposed rule was published on November 19, 1986 (51 FR 41897). The comments received were not considered to be of such significance as to require any change to the proposed rule.

FAC 32, Item XIV. A proposed rule was published in the **Federal Register** on February 21, 1986 (51 FR 6360). As a result of the public comments, only one change was made to the proposed rule to correct a typographical error at 45.106(d).

List of Subjects in 48 CFR Parts 7, 8, 13, 14, 19, 22, 25, 26, 28, 29, 33, 42, 45, and 52

Government procurement.

Dated: January 5, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-32 is effective January 29, 1988.

December 28, 1987.

Eleanor R. Spector,

Deputy Assistant Secretary of Defense for Procurement.

December 24, 1987.

Paul Traus,

Acting Administrator, General Services Administration.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-32 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—A-76 Cost Comparison Public Review Period Revision

FAR 7.306(b)(3) is revised to conform with the policy presently set forth in the supplement to the Office of Management and Budget (OMB) Circular number A-76 (revised August 1983) Part I, Chapter 2, Section I, Appeals of Cost Comparisons, paragraph 6a which specifies a period of 15 to 30 working days for the public review period.

Item II—Revision to FAR 8.405-1(a)

FAR 8.405-1(a) is revised to provide that, in the case of Multiple-Award Schedules, ordering offices shall fully justify in their contract file, any orders over $1,000.00 per line item placed at other than the lowest price. The dollar threshold has been raised from $500.00 to $1,000.00.

Item III—Blanket Purchase Agreement Authorization Lists

FAR 13.203-1(j)(5) is revised to allow an alternate method of identification of individuals authorized to place PBA calls. The current method, providing a list of names of the inviduals authorized to place BPA calls to the supplier, is administratively burdensome where frequent personnel changes occur. This change will allow identification by position title.

Item IV—Release of Solicitation Mailing Lists

FAR 14.205-5 is revised to clarify that contracting offices may require written requests for the release of lists of prospective bidders who were furnished copies of plans and specifications on construction contracts.

Item V—Size Standards

FAR 19.102 is revised to add two SIC codes that were not included in the new tables published in FAC 84-28.

Item VI—Revision Regarding Applicability of CWHSSA to FAR 22.305

FAR 22.305 is revised to delete the applicability to Eniwetok Atoll and Kwajelein Atoll from the Contract Work Hours Safety Standards Act.

Item VII—Reporting Veteran's Employment

FAR 22.1300 is revised and the clause at 52.222-37 is added to include the Department of Labor reporting requirements related to special disabled veterans and veterans of the Vietnam era.

Item VIII—Adding Names of Two Countries to the European Economic Community List

FAR 25.104(a) is revised by adding Portugal and Spain to the European Economic Community list of countries.

Item IX—Other Socioeconomic Programs

FAR Part 26, Other Socioeconomic Programs, is added (no text at FAR level) to facilitate agency needs to promulgate additional agency-level socioeconomic coverage within Subchapter D, Socioeconomic Programs.

Item X—Noncompliance With Bid Guarantee Requirements

FAR 28.101-4 is revised to provide contracting officers with additional situations where consideration may be given to the waiver of noncompliance with bid guarantee requirements.

Item XI—Excise Tax Exemptions

FAR 29.202 is revised to update the Code of Federal Regulations citations. A new section 29.203, Other Federal tax exemptions, is added to include federal tax exemptions other than for manufacturers or special fuels excise taxes.

Item XII—General Services Board of Contract Appeals Jurisdiction

FAR 33.105(a)(1) is revised to reflect a recent revision of 40 U.S.C. 759(f) to give the GSBCA authority to determine its own jurisdiction.

Item XIII—Visits to Contractor Facilities

FAR 42.101(a) and 42.402(a) and (b) are revised to specify that prospective visitors to contractor facilities are to provide information concerning the visit to the cognizant Contract Administration Office (CAO) sufficiently in advance and in adequate detail so as to permit the CAO to advise the visitors in the event information related to contract administration functions currently exists that may satisfy the stated purpose of the visit. This is to preclude duplicate demands being made upon contractors.

Item XIV—Use of Property Clauses in Service Contracts

FAR 45.103, 45.106, and 52.245-4 are revised to clarify the contractor's responsibility for Government-furnished property under service contracts performed at Government installations.

Therefore, 48 CFR Parts 7, 8, 13, 14, 19, 22, 25, 26, 28, 29, 33, 42, 45, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 7, 8, 13, 14, 19, 22, 25, 26, 28, 29, 33, 42, 45, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

2. Section 7.306 is amended in paragraph (b)(3) by revising the second sentence to read as follows:

7.306 Evaluation.

* * * * *

(b) * * *

(3) * * * The review period shall last for the period specified in the solicitation (at least 15 working days, up to a maximum of 30 working days if the contracting officer considers the action to be complex). * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.405-1 [Amended]

3. Section 8.405-1 is amended in the second sentence of paragraph (a) by removing the figure "$500" and inserting in its place the figure "$1,000".

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

4. Section 13.203-1 is amended by revising paragraph (j)(5) to read as follows:

13.203-1 General.

* * * * *

(j) * * *

(5) *Notice of individuals authorized to purchase under the BPA and dollar limitations by title of position or name.* A statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual shall be furnished to the supplier by the contracting officer.

* * * * *

PART 14—SEALED BIDDING

5. Section 14.205-5 is amended in paragraph (b) by adding a second sentence to read as follows:

14.205-5 Release of solicitation mailing lists.

* * * * *

(b) * * * Contracting offices may require written requests and establish appropriate procedures.

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

6. Section 19.102 is amended in the size standards tables, Group 36, SIC Code 3699, by removing the size "500" and inserting in its place "750" and by adding numerically in Major Group 50, two SIC codes and their corresponding description and size to read as follows:

19.102 Size standards.

* * * * *

5051 Metals Service Centers and Offices—100

5052 Coal and Other Minerals and Ores—100

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.305 [Amended]

7. Section 22.305 is amended in paragraph (e) by removing the words "Eniwetok Atoll, Kwajalein Atoll,".

22.1300 [Amended]

8. Section 22.1300 is amended in the first sentence following the parenthetical reference "41 CFR Part 60-250" by adding the words "and Part 61-250".

9. Section 22.1304 is revised to read as follows:

22.1304 Department of Labor notices and reports.

(a) The contracting officer shall furnish to the contractor appropriate notices for posting when they are prescribed by the Director.

(b) The Act requires contractors to submit a report at least annually to the Secretary of Labor regarding employment of Vietnam era and special disabled veterans unless all of the terms of the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, have been waived (see 22.1303). The contractor shall use Standard Form VETS-100, Federal Contractor Veterans' Employment Report, to submit the required reports.

10. Section 22.1308 is amended by revising the section title, by redesignating paragraph (b) as (c), and by adding a new paragraph (b) to read as follows:

§ 22.1308 Contract clauses.

* * * * *

(b) The contracting officer shall insert the clause at 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era, in solicitations and contracts containing the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans.

* * * * *

PART 25—FOREIGN ACQUISITION

25.103 [Amended]

11. Section 25.103 is amended by removing the words "Defense Acquisition Regulation" and inserting in their place the words "Department of Defense (DOD) Federal Acquisition Regulation Supplement".

25.104 [Amended]

12. Section 25.104 is amended in paragraph (a) by removing in the second and fourth sentences the date "January 1, 1981" and inserting in each place the date "January 1, 1986" and by adding alphabetically in the third sentence following the word "Netherlands", the words "Portugal, Spain,".

13. Part 26 is added to read as follows:

PART 26—OTHER SOCIOECONOMIC PROGRAMS

Note.—This part contains to text at the FAR level. It has been created to facilitate promulgation of additional agency-level socioeconomic coverage which properly falls under FAR Subchapter D—Socioeconomic Programs, but neither implements or supplements existing FAR Parts 19, 20, nor 22 through 25.

PART 28—BONDS AND INSURANCE

14. Section 28.101-4 is amended by adding paragraphs (g), (h), and (i) to read as follows:

28.101-4 Noncompliance with bid guarantee requirements.

* * * * *

(g) When an otherwise acceptable bid bond was submitted with a signed bid, but the bid bond was not signed by the offeror.

(h) When an otherwise acceptable bid bond is erroneously dated or bears no date at all.

(i) When a bid bond does not list the United States as obligee, but correctly identifies the offeror, the solicitation number and the name and location of the project involved, so long as it is acceptable in all other respects.

PART 29—TAXES

29.202 [Amended]

15. Section 29.202 is amended in paragraph (b) by removing the reference "26 CFR 48.4041-12" and inserting in its place "26 CFR 48.4221-3"; by removing in paragraph (c) the reference "26 U.S.C. 4221" and inserting in its place "26 CFR 48.4221-2"; by removing in paragraph (d) the reference "26 CFR 48.4041-9(c)" and inserting in its place "26 CFR 48.4221-4(d)(2)"; by removing in paragraph (d) the period following the word "quarters" and inserting the period following the parenthetical reference "(26 U.S.C. 4041 and 4221)."; and by removing in paragraph (f) the reference "26 U.S.C. 4064(a)" and inserting in its place "26 U.S.C. 4053".

16. Section 29.203 is added to read as follows:

29.203 Other Federal tax exemptions.

(a) Pursuant to 26 U.S.C. 4293, the Secretary of the Treasury has exempted the United States from the communications excise tax imposed in 26 U.S.C. 4251, when the supplies and services are for the exclusive use of the United States. (Secretarial Authorization, June 20, 1947, Internal Revenue Cumulative Bulletin, 1947-1, 205.)

(b) Pursuant to 26 U.S.C. 4483(b), the Secretary of the Treasury has exempted the United States from the federal highway vehicle users tax imposed in 26 U.S.C. 4481. The exemption applies whether the vehicle is owned or leased by the United States. (Secretarial Authorization, Internal Revenue Cumulative Bulletin, 1956-2, 1369.)

PART 33—PROTESTS, DISPUTES, AND APPEALS

17. Section 33.105 is amended by revising in paragraph (a)(1) the first sentence to read as follows:

33.105 Protests to GSBCA.

(a)(1) An interested party may protest an ADP acquisition subject to section 111 of the Federal Property and Administrative Services Act (40 U.S.C. 759) by filing a protest with the GSBCA. * * *

* * * * *

PART 42—CONTRACT ADMINISTRATION

18. Section 42.101 is amended in paragraph (a) by revising the first sentence to read as follows:

42.101 Policy.

(a) Agencies requiring field contract administration or audit services are encouraged to use cross-servicing arrangements with existing contract administration and contract audit components to preclude duplicate demands being made upon contractors (see 42.102(a) for the directories of cognizant offices). * * *

* * * * *

19. Section 42.402 is amended by revising the introductory text of paragraph (a); by redesignating paragraph (b) as (c), and by adding a new paragraph (b) to read as follows:

42.402 Visits to contractors' facilities.

(a) Government personnel planning to visit a contractor's facility in connection with one or more Government contracts shall provide prior notification to the cognizant CAO, with the following information, sufficiently in advance to permit the CAO to make necessary arrangements. Such notification is for the purpose of eliminating duplicative reviews, requests, investigations, and audits relating to the contract administration functions in Subpart 42.3 delegated to CAO's and shall, as a minimum, include the following (see also paragraph (b) of this section):

* * * * *

(b) If the visit will result in reviewing, auditing, or obtaining any information from the contractor relating to contract administration functions, the prospective visitor shall identify the information in sufficient detail so as to permit the CAO, in coordination with the contractor, to determine whether such information, adequate to fulfill the requirement, has recently been reviewed by or is available within the Government. If so, the CAO will discourage the visit and refer the prospective visitor to the Government office where such information is located. Where the office is the CAO, such information will be immediately forwarded or otherwise made available to the requestor.

* * * * *

PART 45—GOVERNMENT PROPERTY

20. Section 45.103 is amended by removing in paragraph (b)(2) the word "or"; by removing in paragraph (b)(3) the period at the end of the sentence and inserting in its place the words "; or" and by adding paragraph (b)(4) to read as follows:

45.103 Responsibility and liability for Government property.

* * * * *

(b) * * *

(4) Negotiated or sealed bid service contracts performed on a Government installation where the contracting officer determines that the contractor has little direct control over the Government property because it is located on a Government installation and is subject to accessibility by personnel other than the contractor's employees and that by placing the risk on the contractor, the cost of the contract would be substantially increased.

* * * * *

21. Section 45.106 is amended by revising paragraph (b)(2) and paragraph (d) to read as follows:

45.106 Government property clauses.

* * * * *

(b) * * *

(2) If the contract is (i) a negotiated fixed-price contract for which prices are not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, or (ii) a fixed-price service contract which is performed primarily on a Government installation, provided the contracting officer determines it to be in the best interest of the Government (see Subpart 45.103(b)(4)), the contracting officer shall use the clause with its Alternate I.

* * * * *

(d) The contracting officer may insert the clause at 52.245-4, Government-Furnished Property (Short Form), in solicitations and contracts when a fixed-price, time-and-material, or labor-hour contract is contemplated and the acquisition cost of all Government-furnished property to be involved in the contract is $50,000 or less; unless a contract with an educational or nonprofit organization is contemplated.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

22. Section 52.222-37 is added to read as follows:

52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.

As prescribed in 22.1308(b), insert the following clause:

Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (Jan. 1988)

(a) The contractor shall report at least annually, as required by the Secretary of Labor, on:

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workplace of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1 of the year the report is due, or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each contractor subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012.

(f) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order or $10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

(End of clause)

23. Section 52.245-4 is amended by revising the introductory text to read as follows:

52.245-4 Government-Furnished Property (Short Form).

As prescribed in 45.106(d), insert the following clause:

* * * * *

[FR Doc. 88-367 Filed 1-8-88; 8:45 am]
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federal register

Monday
January 11, 1988

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Airport Radar Service Areas; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-24]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Airport Radar Service Areas (ARSA) at Fayetteville Municipal/Grannis Field Airport, NC; Pope Air Force Base (AFB), NC, and Shaw AFB, SC. Each location is an airport at which a nonregulatory Terminal Radar Service Area (TRAS) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 UTC, February 11, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA has designated 93 ARSA's as published in the **Federal Register** in the implementation of this NAR recommendation.

On August 7, 1987, the FAA proposed to designate ARSA's at Fayetteville Municipal/Grannis Field Airport, NC; Pope AFB, NC, and Shaw AFB, SC, (52 FR 29474). This rule designates ARSA's at these airports. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held informal airspace meetings for each of these proposed airports.

Discussion of Comments

The FAA received seven comments on the proposed ARSA's. One of the commenters was in favor of all three locations. The remaining commenters offered objections to one or all of the proposed sites.

The Soaring Society of America (SSA) submitted a number of objections to the basic ARSA program. All comments objecting to the ARSA program were considered during the rulemaking for the ARSA rule which was published in the **Federal Register** on March 6, 1985 (50 FR 9252). The SSA, though they found no record of any affiliated organizations near the proposed sites, objected based on their objection to the ARSA program. The SSA offered no site specific recommendations/objections.

One commenter objected to the Fayetteville ARSA based on the impact on his small business, citing the Regulatory Flexibility Act of 1980. The commenter requested that a cutout of the five-mile core be provided for his small private airport.

Provisions have been made in the ARSA program for local letters of agreement to accommodate such small operations. The Facility Manager at Fayetteville has discussed the problem with the commenter and the commenter is satisfied that his objection will be resolved with a letter of agreement.

Another commenter suggested that Fayetteville Approach Control would not be able to handle the increased workload created by the ARSA.

The FAA does not agree. Fayetteville Approach Control currently handles the traffic participating in the TRSA program which is better than 95 percent of total traffic. The FAA does not anticipate a significant increase in overall traffic, and the facility is confident that they will be able to provide the desired level of service.

The Commander at Simmons Army Airfield submitted a letter supporting the Fayetteville and Pope ARSA's and offered some recommended alterations. The desired alterations would remove the Simmons Army Air Field control zone from the surface area.

The FAA finds the recommendations have merit and through discussions with the proponent has made alterations to the Fayetteville and Pope ARSA's, as reflected in this rule, to the satisfaction of the commenter.

A commenter suggested that the FAA retain the TRSA at Shaw AFB but use ARSA separation standards. He further recommended that two approach corridors be established instead of the five- and ten-mile circles.

The FAA finds that these recommendations are in conflict with the standardization intent of the ARSA program. A National Airspace Review (NAR) Task Group comprised of all facets of aviation recommended that the FAA establish standardized airspace in the vicinity of airports. The recommendation was intended to make it easier for pilots to predict what configuration of airspace they will find when flying into a new area. Therefore, we will not adopt the recommendation. The same commenter also remarked about radio quality and "looser tolerance." These remarks, though not ARSA related, are being passed on to the appropriate offices for investigation.

One commenter had six recommendations for the Shaw ARSA. His first recommendation was to raise the floor of the five- to ten-mile area to Shaw's minimum vectoring altitude (MVA), to allow for more room over antennas and for operation beneath the ARSA. The FAA does not concur. The ARSA concept is designed to enhance safety in the vicinity of airports with significant activity. Theoretically, with the floor of the ARSA at the MVA, an IFR aircraft could be at the MVA and a nonparticipant one foot below. Such a situation could result in a midair collision while both aircraft were operating legally. An ARSA is designed to provide air traffic controllers with information about all aircraft operating to/from and in the vicinity of the primary airport at critical altitudes. This proposal would preclude that at one of the most critical altitudes.

The commenter secondly suggested that the staffing at Shaw was not sufficient to handle the increase in traffic activity. The FAA finds that the staffing at Shaw is not a valid concern. Shaw Approach Control currently operates a TRSA where more than 90 percent of total traffic are participants. The Air Force assures us that the staff at Shaw can handle any probable activity increase and provide the desired level of service.

The commenter also suggested that he was under the impression that the FAA had already made their decision prior to any FAA regulatory process. The FAA has followed regulatory processes. All suggestions/comments to the docket were considered prior to taking any final regulatory action. This is demonstrated by the alteration made to the Fayetteville/Pope ARSA due to suggestions received.

The last two comments from this commenter dealt with the way air traffic is counted for ARSA establishment purposes and potential procedural matters for the Shaw Aero Club.

The FAA finds that the commenter's concerns as to the methods of counting air traffic are not valid. Establishment criteria for an ARSA is based on instrument operations at the primary airport, not overflights transiting the area. Formation flights are counted as one activity not by the number of individual aircraft. Shaw meets the FAA's establishment criteria.

The FAA also finds that the suggestion for the Shaw Aero Club is a procedural matter outside the pervue of this rulemaking action. The suggestion involved establishing procedures for the Shaw Aero Club to have unencumbered access between Shaw AFB and Shaw Municipal Airport. The ARSA program does provide for establishment of letters of agreement to minimize the impact where necessary.

Regulatory Evaluation

Those comments that addressed information presented in the Regulatory Evaluation of the notice have been discussed above. The Regulatory Evaluation discussed in the NPRM, as clarified by the "Discussion of Comments" contained in the preamble to the final rule, constitutes the Regulatory Evaluation of the final rule. Both documents have been placed in the regulatory docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of both the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will occur in the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the ARSA sites established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction of midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA sites established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding some satellite airports located within the 5-mile ring to avoid adversely impacting their operations, and in other cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to eliminate virtually any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates Airport Radar Service Areas (ARSA) at Fayetteville Municipal/Grannis Field Airport, NC; Pope AFB, NC, and Shaw AFB, SC. Each location designated is an airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

For the reasons discussed above, the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.50 [Amended]

2. Section 71.501 is amended as follows:

Fayetteville Municipal/Grannis Field Airport, NC [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Fayetteville Municipal/Grannis Field Airport (lat. 34°59′26″N., long. 78°52′50″W.) excluding that airspace below 1,400 feet MSL within a 1½-mile radius of Gray's Creek Airport (lat. 34°53′01″N., long. 78°50′09″W.); and that airspace within a 10-mile radius of the airport extending upward from 1,400 feet MSL to and including 4,200 feet MSL, excluding that airspace contained within Restricted Areas R–5311 A, B and C when they are active. This airport radar service area is effective during the specific days and hours of operation of the Fayetteville Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Pope AFB, NC [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Pope AFB (lat. 35°09′58″N., long. 79°01′03″W.), excluding that airspace below 1,400 feet MSL contained in the Simmons Army Air Field, NC, Control Zone, and excluding that airspace contained within Restricted Areas R–5311 A, B and C when they are active; and that airspace within a 10-mile radius of Pope AFB extending upward from 2,000 feet MSL to and including 4,200 feet MSL, beginning at the northern boundaries of R–5311 A, B and C clockwise to the 020° bearing from the airport; and that airspace extending upward from 1,400 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the airport beginning at the 020° bearing from the airport clockwise to the northern boundaries of R–5311 A, B and C, excluding that airspace contained in R–5311 A, B and C when they are active and excluding that airspace contained in the Fayetteville Municipal/Grannis Field Airport Airport Radar Service Area (ARSA). This ARSA is effective during the specific days and hours of operation of the Fayetteville Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Shaw AFB, SC [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Shaw AFB (lat. 33°58′24″N., long. 80°28′24″W.) excluding that airspace below 1,500 feet MSL within a 2-mile radius of the Sumter Municipal Airport (lat. 33°59′42″N., long. 80°21′45″W.); and that airspace extending upward from 1,500 feet MSL to and including 4,200 feet MSL within a 10-mile radius of Shaw AFB, excluding that airspace contained within Restricted Area R–6002 when it is in use.

Issued in Washington, DC, on January 4, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–414 Filed 1–8–88; 8:45 am]

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federal register

Monday
January 11, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Airport Radar Service Area; Supplemental Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-27]

Proposed Establishment of Airport Radar Service Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice amends an earlier notice in which the FAA proposed to designate an Airport Radar Service Area (ARSA) at Chicago Midway Airport, IL, by proposing a change in the description of the ARSA. The wrong description was inadvertently published. Midway Airport is a public airport at which Stage II radar service is currently in effect. Establishment of an ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at Chicago Midway Airport would reduce the risk of midair collision and promote the efficient control of air traffic in the terminal.

DATES: Comments must be received on or before February 17, 1988.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Airspace Docket No. 87-AWA-27, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

On October 8, 1987, the FAA proposed to designate an ARSA at Chicago Midway Airport, IL, (52 FR 37718). This supplement proposes to amend the earlier notice by changing the description of the ARSA. As originally proposed, the ARSA ceiling was proposed to be 3,000 feet MSL. Further study indicated a need to amend the original proposal to obtain full advantage of the ARSA, however, the wrong description was submitted. The entire proposal as amended is stated below.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§71.501 [Amended]

2. Section 71.501 is amended as follows:

Chicago Midway Airport, IL [Revised]

That airspace within a 5-mile radius of the Chicago Midway Airport (lat. 41°47′10″ N., long 87°45′08″ W.) extending upward from the surface to 4,000 feet MSL; and that airspace within a 10-mile radius of the Chicago Midway localizer course to Runway 31L clockwise to where the 10-mile arc of the O'Hare VOR intersects the 10-mile radius of the airport, thence via the O'Hare 10-mile arc, extending upward from 1,900 feet MSL to 4,000 feet MSL. All airspace contained in the O'Hare TCA is excluded from the Midway ARSA.

Issued in Washington, DC, on January 5, 1988.

Daniel J. Peterson,

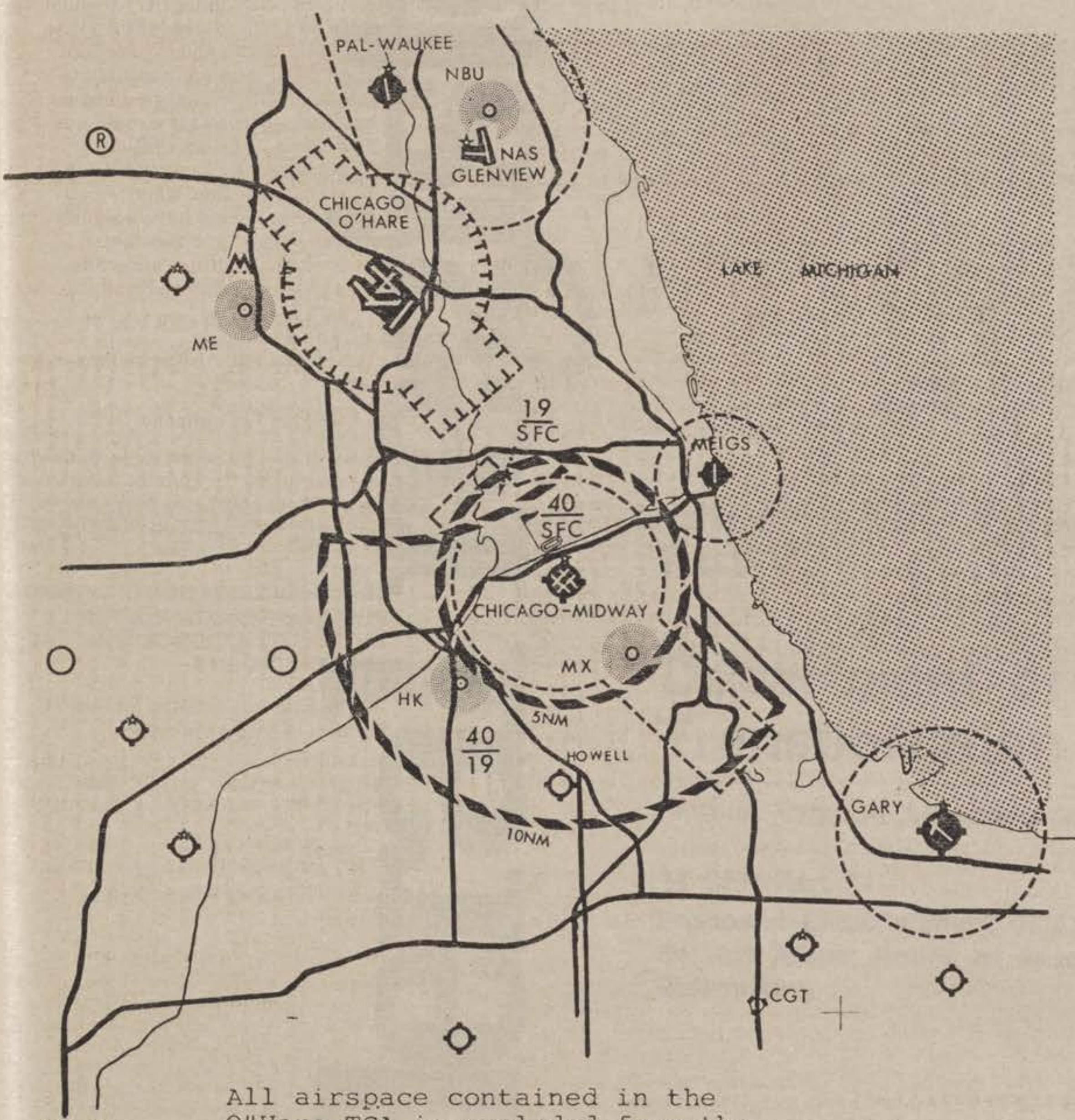
Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

CHICAGO, ILLINOIS
CHICAGO-MIDWAY
FIELD ELEV. 219' MSL



All airspace contained in the O"Hare TCA is excluded from the Midway ARSA.

LEGEND

VFR CHECK POINT

ARSA

ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

[FR Doc. 88-415 Filed 1-8-88; 8:45 am]

BILLING CODE 4910-13-C

federal register

Monday
January 11, 1988

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Airport, Radar Service Areas; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 87-AWA-52]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish an Airport Radar Service Area (ARSA) at Baton Rouge Metro Ryan Field, LA; Charleston Yeager Airport, WV; City of Colorado Springs Municipal Airport, CO; Palm Springs Municipal Airport, CA; and Santa Barbara Municipal Airport, CA. With the exception of Santa Barbara, each location is an airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations would promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

DATES: Comments must be received on or before April 10, 1988. Informal airspace meeting dates are as follows: Baton Rouge Metro Ryan Field, LA—March 15, 1988; Charleston Yeager Airport, WV—March 16, 1988; City of Colorado Springs Municipal Airport, CO—March 10, 1988; Palm Springs Municipal Airport, CA—March 14, 1988; and Santa Barbara Municipal Airport, CA—March 10, 1988.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 87-AWA-52, 800 Independence Avenue, SW., Washington, DC 20591.

The informal airspace meeting places are as follows:

Baton Rouge Metro Ryan Field, LA, ARSA
Date: March 15, 1988
Time: 7:00 p.m.
Location: Civil Air Patrol Comm. Squadron, 4524 Blanche Noyes Road (Off Blanche Road and Highway 67), Baton Rouge, LA 70811

Charleston Yeager Airport, WV, ARSA
Date: March 16, 1988
Time: 7:00 p.m.
Location: Columbia Gas Transmission Co., 1700 MacCorkle Ave., S.E., Charleston, WV 25325

City of Colorado Springs Municipal Airport, CO, ARSA
Date: March 10, 1988
Time: 7:00 p.m.
Location: Best Western Palmer House, I-25 at Fillmore, Colorado Springs, CO 80907

Palm Springs Municipal Airport, CA, ARSA
Date: March 14, 1988
Time: 7:00 p.m.
Location: City Hall Council Chambers, 3200 Taquito-McCallum Way, Palm Springs, CA 92262

Santa Barbara Municipal Airport, CA, ARSA
Date: March 10, 1988
Time: 7:00 p.m.
Location: Santa Barbara County School's Office Auditorium, 4400 Cathedral Oaks, Santa Barbara, CA 93105

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

The informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

This notice involves five locations. Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-52." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold informal airspace meetings for the proposed ARSA locations in order to receive additional input with respect to the proposal. The dates, times, and places for these meetings are listed above. Persons who plan to attend the meetings should be aware of the following procedures to be followed:

(a) The meetings will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) There will be no admission fee or other charge to attend and participate. The meetings will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of the meetings is more expeditious than planned.

(c) The meetings will not be recorded. A summary of the comments made at these meetings will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meetings may be accepted. Participants submitting handout materials should present an original and two copies to the presiding officer. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meetings should not be taken as expressing a final FAA position.

Agenda:

Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1-2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83-9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide as operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbus, OH, airports and also at the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which are included in the TRSA replacement program. The task group recommended that these criteria take into account, among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. This criteria has been developed and is being published via the FAA directives system.

The FAA has established ARSA's at 93 locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's or locations without TRSA's which warrant implementation of an ARSA.

Related Rulemaking

This notice proposes ARSA designation at five locations identified as candidates for an ARSA in the preamble to Amendment No. 71-10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the **Federal Register.**

The Current Situation at the Proposed ARSA Locations

A TRSA is currently in effect at four of the locations at which ARSA's are proposed in this notice. Santa Barbara is a radar facility currently providing Stage II service. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR). Stage II service, with the exception of separation, provides the same. TRSA airspace and operating rules are not established by regulation, and participation by pilots operating under VFR in voluntary, although pilots are urged to participate. This level of service is known as Stage III and is provided at all locations identified as TRSA's. The NAR task group recommended the replacement of most TRSA's with ARSA's.

A number of problems with the TRSA program were identified by the task group. The task group stated that because there are different levels of service offered within the TRSA, users are not always sure of what restrictions or privileges exist, or how to cope with them. According to the task group, there is a shared feeling among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service, in the same way, and, to the extent feasible, within standard size airspace designations.

Certain provisions of FAR section 91.87 add to the problem identified by the task group. For example, aircraft operating under VFR to or from a satellite airport and within the airport traffic area (ATA) of the primary airport are excluded from the two-way radio communications requirement of § 91.87. This condition is acceptable until the volume and density of traffic at the primary airport dictates further action. At the five proposed locations, the volume and density of traffic have increased to the point where the implementation of ARSA's is strongly recommended.

The Proposal

The FAA is considering an amendment to § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish ARSA's at Baton Rouge Metro Ryan Field, LA; Charleston Yeager Airport, WV; City of Colorado Springs Municipal Airport, CO; Palm Springs Municipal Airport, CA; and Santa Barbara Municipal Airport, CA which are public airports, at four of which nonregulatory TRSA's are currently in effect. The proposed locations are depicted on charts in Appendix 1 to this notice.

FAA regulations, 14 CFR 91.88, define ARSA and prescribe operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA. The ARSA rule provides in part that, prior to entering the ARSA, any aircraft arriving at any airport in an ARSA or flying through an ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above the airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, § 71.14 and § 71.501, and Part 91, § 91.1 and § 91.88.

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Regulatory Evaluation

The FAA has conducted a Regulatory Evaluation of the proposed establishment of these additional ARSA sites. The major findings of that evaluation are summarized below, and the evaluation is available in the regulatory docket.

a. Costs

Costs which potentially could result from the establishment of additional ARSA sites fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

It has been the FAA's experience, however, that these potential costs do not materialize to any appreciable degree, and when they do occur, they are transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites. The reasons for these conclusions are presented below.

FAA expects that the additional ARSA sites proposed in this notice can be implemented without requiring additional controller personnel above current authorized staffing levels, because participation in radar services at these locations is already quite high, and the separation standards permitted in ARSA's will allow controllers to absorb the slight increase in participating traffic by handling all traffic much more efficiently. Further, because controller training will be conducted during normal working hours and these facilities already operate the necessary radar equipment, FAA does not expect to incur any appreciable implementation costs. Essentially, the FAA will modify its terminal radar procedures at the proposed ARSA sites in a manner that will make more efficient use of existing resources.

No additional costs are expected to be incurred because of the need to revise sectional charts to incorporate the new ARSA airspace boundaries. Changes of this nature are routinely made during charting cycles, and the planned effective dates for newly established ARSA's are scheduled to coincide with the regular 6-month chart publication intervals.

This rulemaking proceeding and process will satisfy much of the need to notify the public and educate pilots about ARSA operations. The informal public meeting being held at each location where an ARSA is being proposed provides pilots with the best opportunity to learn both how an ARSA works and how it will affect their local operations. The expenses associated with these public meetings are considered costs attributable to the rulemaking process; however, any public information costs following establishment of a new ARSA are strictly attributable to the ARSA. The FAA expects to distribute a Letter to Airmen to all pilots residing within 50 miles of ARSA sites explaining the operation and configuration of the ARSA finally adopted. The FAA also has issued an Advisory Circular on ARSA's. The combined Letter to Airmen and prorated Advisory Circular costs have been estimated to be approximately $500 for each ARSA site. This cost is incurred only once upon the initial establishment of an ARSA.

Information on ARSA's following the establishment of additional sites will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues and, therefore, will not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings that will be held at each site following implementation of the ARSA which will allow users to provide feedback to the FAA on local ARSA operations. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

FAA anticipates that some pilots who currently transit a TRSA without establishing radio communications or participating in radar services may choose to circumnavigate the mandatory participation airspace of an ARSA rather than participate. Some minor delay costs will be incurred by these pilots because of the additional aircraft variable operating cost and lost crew and passenger time resulting from the deviation. Other pilots may elect to overfly the ARSA, or transit below the 1,200 feet above ground level (AGL) floor between the 5- and 10-nautical-mile rings. Although this will not result in any appreciable delay, a small additional fuel burn will result from the climb portion of the altitude adjustment (which will be offset somewhat by the descent).

FAA recognizes that the potential exists for delay to develop at some locations following establishment of an ARSA. The additional traffic that the radar facilities will be handling as a result of the mandatory participation requirement may, in some instances, result in minor delays to aircraft operations. FAA does not expect such delay to be appreciable. FAA expects that the greater flexibility afforded controllers in handling traffic as a result of the separation standards allowed in an ARSA will keep delay problems to a minimum. Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and allocate resources to take fullest advantage of the efficiencies that an ARSA will permit. This has been the experience at most of the locations where ARSA's have been in effect for the longest period of time and is the recurring trend at the locations that have been more recently designated.

The FAA does not expect that any operator will find it necessary to install radio transceivers as a result of establishing the ARSA's proposed in this notice. Aircraft operating to and from primary airports already are required to have two-way radio communications capability because of existing airport traffic areas and, therefore, will not incur any additional costs as a result of the proposed ARAS's. Further, the FAA has made an effort to minimize these potential costs throughout the ARSA program by providing airspace exclusions, or cutouts, for satellite airports located within 5 nautical miles of the ARSA center where the ARSA would otherwise have extended down to the surface. Procedural agreements between the local ATC facility and the affected airports have also been used to avoid radio installation costs.

At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. However, exclusions, cutouts, and special procedures have been used extensively throughout the ARSA program to alleviate adverse impacts on local fixed base and airport operators. Similarly, the FAA has eliminated potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA does not expect that any such adverse impact will occur at the candidate ARSA sites proposed in this notice.

b. Benefits

Much of the benefit that will result from ARSA's is nonquantifiable and is attributable to simplification and standardization of ARSA configurations and procedures. Further, once experience is gained in ARSA operations, the flexibility allowed air traffic controllers in handling traffic within an ARSA will enable them to move traffic with both efficiently and increased safety.

Some of the benefits of the ARSA cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. ARSA's have the potential of reducing both near and actual midair collisions at the airports where they are established. Based upon the experience at the Austin and Columbus ARSA confirmation sites, FAA estimates that near midair collisions may be reduced by approximately 35 to 40 percent. Further, FAA estimates that implementation of the ARSA program nationally may prevent approximately one midair collision every 1 to 2 years throughout the United States. The quantifiable benefits of preventing a midair collision can range from less than $100,000, resulting from the prevention of a minor nonfatal accident between general aviation aircraft, to $300 million or more, resulting from the prevention of a midair collision involving a large air carrier aircraft and numerous fatalities. Establishment of ARSA's at the sites proposed in this notice will contribute to these improvements in safety.

c. Comparison of Costs and Benefits

A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, and it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites.

FAA expects that any adjustment problems that may be experienced at the ARSA locations proposed in this notice will only be temporary, and that once established, the ARSA's will result in an overall improvement in efficency in terminal area operations. This has been the experience at the vast majority of ARSA sites that have already been implemented. In addition to these operational efficiency improvements, establishment of the proposed ARSA sites will contribute to a reduction in near and actual midair collisions. For these reasons, FAA expects that establishment of the ARSA sites proposed in this notice will produce long term, ongoing benefits that will far exceed their costs, which are essentially transitional in nature.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

The small entities that potentially could be affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operators and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in radar services and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. FAA has proposed to exclude many satellite airports located within 5 nautical miles of the primary airport at candidate ARSA sites to avoid adversely impacting their operations and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports that establish special procedures for operating to and from these airports. In this manner, FAA expects to eliminate any adverse impact on the operations of small satellite airports that potentially could result from the ARSA program. Similarly, FAA expects to eliminate potentially adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures that will accommodate these activities through local agreements between ATC facilities and the affected organizations. FAA has utilized such arrangements extensively in implementing the ARSA's that have been established to date.

Further, because the FAA expects that any delay problems that may initially develop following implementation of an ARSA will be transitory, and because the airports that will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States, small entities of any type that use aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation, if adopted, will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amended

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§71.501 [Amended]

2. Section 71.501 is amended as follows:

Baton Route Metro, Ryan Field, LA [New]

That airspace within a 5-mile radius of the Baton Route Metro, Ryan Field (lat. 30°31′57″N., long. 91°08′59″W.) extending upward from the surface to and including 4,100 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 1,300 feet MSL to and including 4,100 feet MSL.

Colorado Springs Municipal Airport, CA [New]

That airspace within a 5-mile radius of the Colorado Springs Municipal Airport (lat. 38°48′31″N., long. 104°42′34″W.) extending upward from the surface to and including 10,200 feet MSL; and that airspace within a 10-mile radius of the airport, beginning at a line direct from a point at the 270°T bearing from the airport 5 miles to a point at the 333°T bearing from the airport 10 miles, clockwise to the 099°T bearing from the airport extending upward from 8,200 feet MSL to and including 10,200 feet MSL, excluding that airspace within a 2-mile radius of the Meado Lake Airport (lat. 38°57′00″N., long. 104°34′23″W.); and that airspace within a 10-mile radius of the airport from the 099°T bearing from the airport clockwise to the 188°T bearing from the airport extending upward from 7,100 feet MSL to and including 10,200 feet MSL.

Charleston Yeager Airport, WV [New]

That airspace within a 5-mile radius of the Yeager Airport (lat. 38°22′23″N., long. 81°35′36″W.) extending upward from the surface to and including 5,000 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 2,800 feet MSL to and including 5,000 feet MSL.

Palms Springs Municipal Airport, CA [New]

That airspace within a 5-mile radius of the Palm Springs Municipal Airport (lat. 33°49′41″N., long. 116°30′19″W.) extending upward from the surface to and including 4,500 feet MSL; and that airspace within a 10-mile radius of the airport from the 286°T bearing from the airport clockwise to the 093°T bearing from the airport extending upward from 2,200 feet MSL to and including 4,500 feet MSL; and that airspace within a 10-mile radius of the airport from the 093°T bearing from the airport clockwise to the 139°T bearing from the airport extending upward from 1,700 feet MSL to and including 4,500 feet MSL.

Santa Barbara Municipal Airport, CA [New]

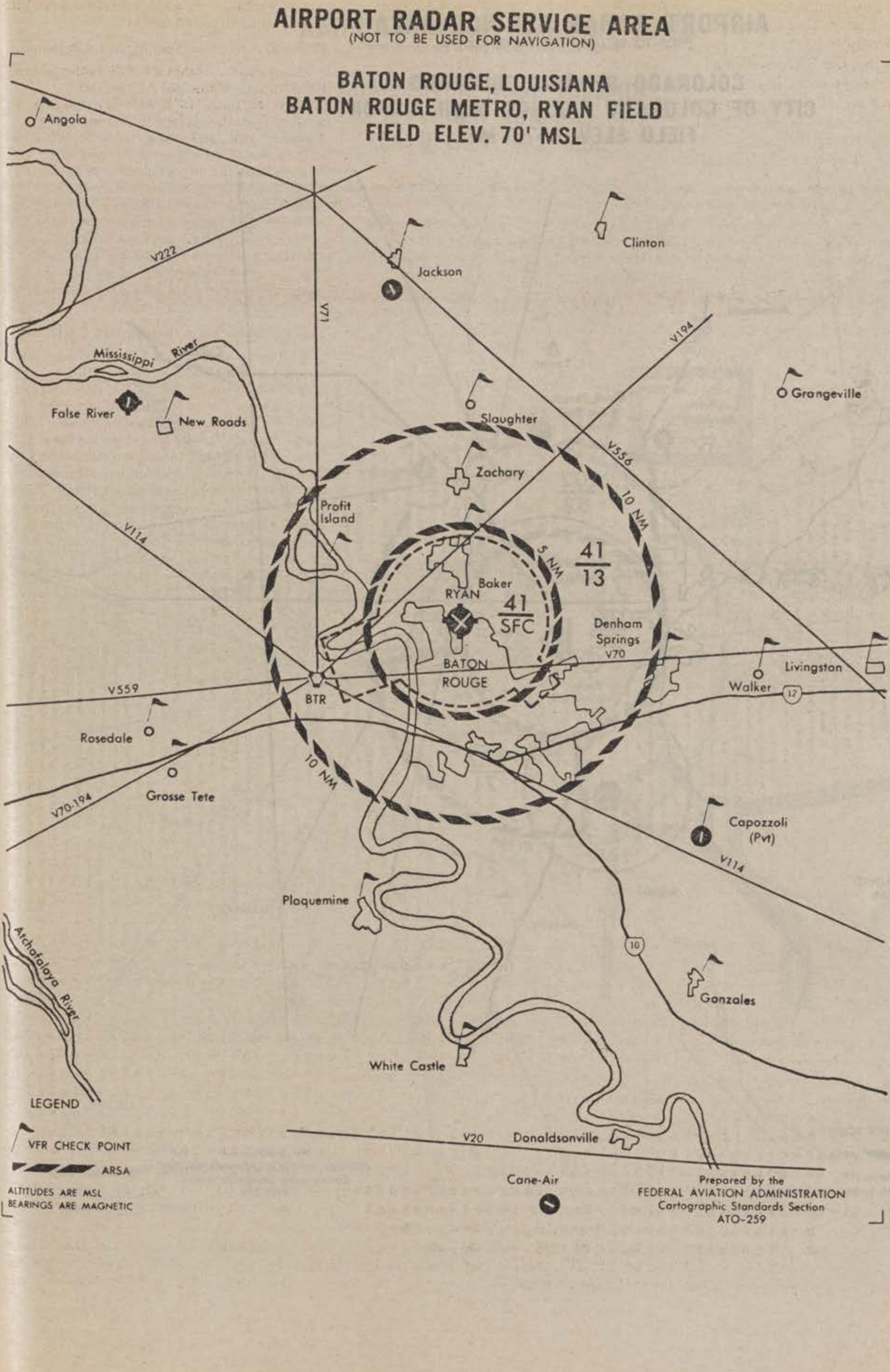
That airspace within a 5-mile radius of the Santa Barbara Municipal Airport (lat. 34°25′34″N., long. 119°50′22″W.) extending upward from the surface to and including 4,000 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 1,500 feet MSL to and including 4,000 feet MSL, excluding that airspace from the 295°T bearing from the airport, between the 5- and 10-mile radius, clockwise to a line from the 057°T bearing from the airport on the 5-mile radius direct to a point on the 078°T bearing on the 10-mile radius.

Issued in Washington, DC, on January 4, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

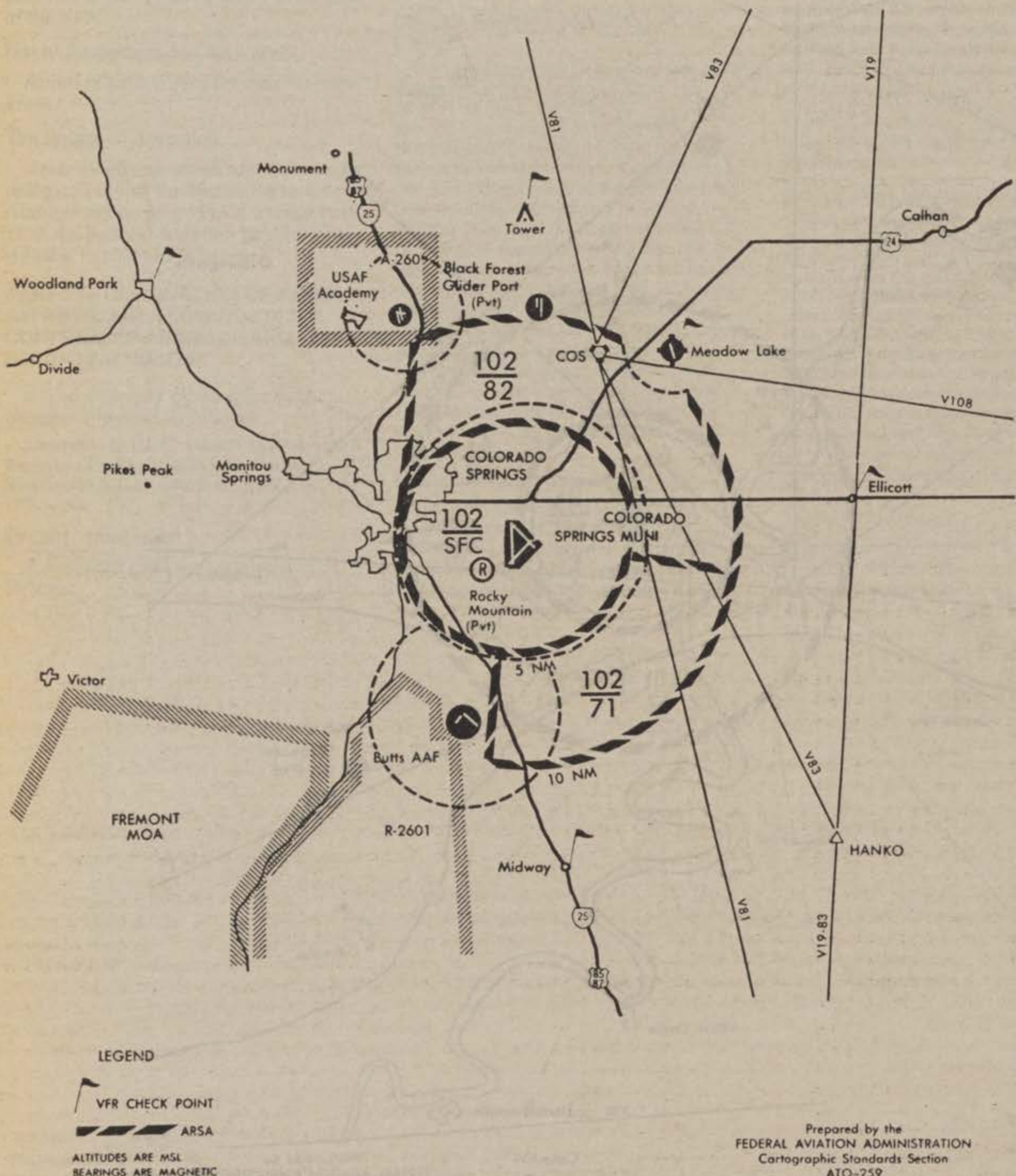
BILLING CODE 4910-13-M

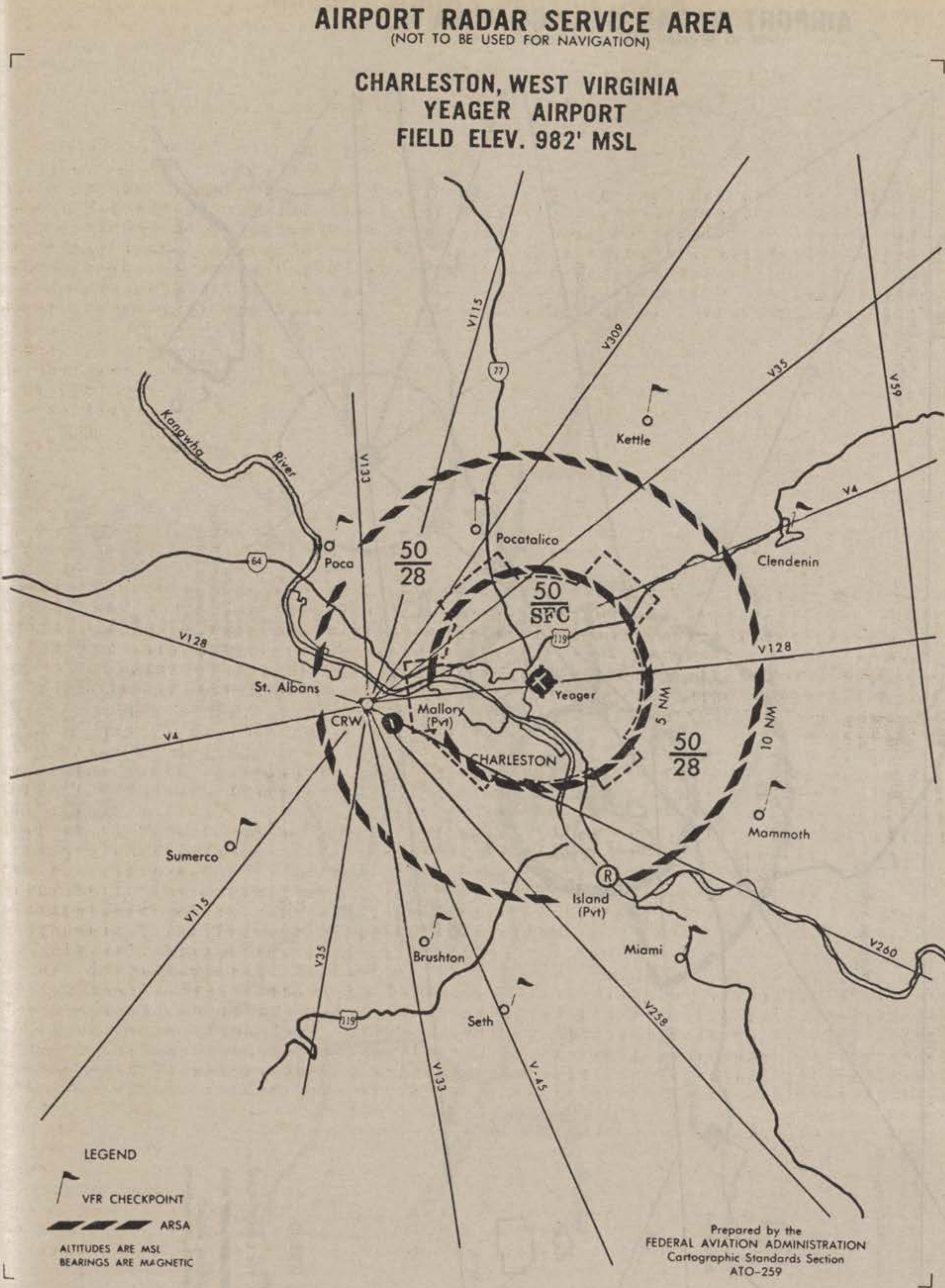

AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)
BATON ROUGE, LOUISIANA
BATON ROUGE METRO, RYAN FIELD
FIELD ELEV. 70' MSL
Angola
Clinton
Jackson
V222
V71
V194
Mississippi River
Grangeville
False River
New Roads
Slaughter
V556
Zachary
10 NM
Profit Island
V114
5 NM
41
13
Baker
RYAN
41
SFC
Denham Springs
V70
BATON ROUGE
Livingston
Walker
17
V559
BTR
Rosedale
Grosse Tete
V70-194
10 NM
Capozzoli (Pvt)
V114
Plaquemine
10
Atchafalaya River
Gonzales
White Castle
LEGEND
VFR CHECK POINT
ARSA
ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC
V20
Donaldsonville
Cane-Air
Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

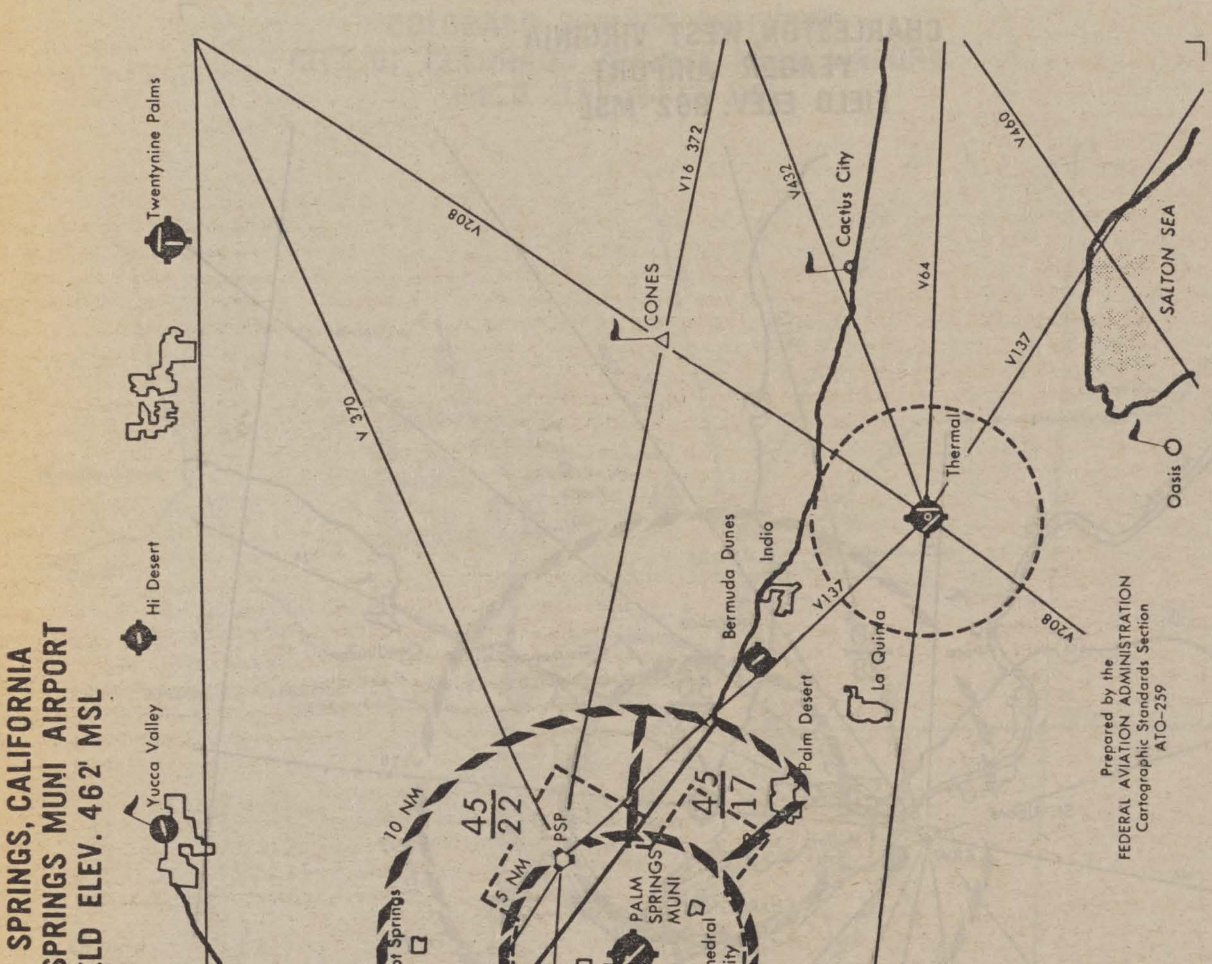
COLORADO SPRINGS, COLORADO
CITY OF COLORADO SPRINGS MUNI AIRPORT
FIELD ELEV. 6172' MSL



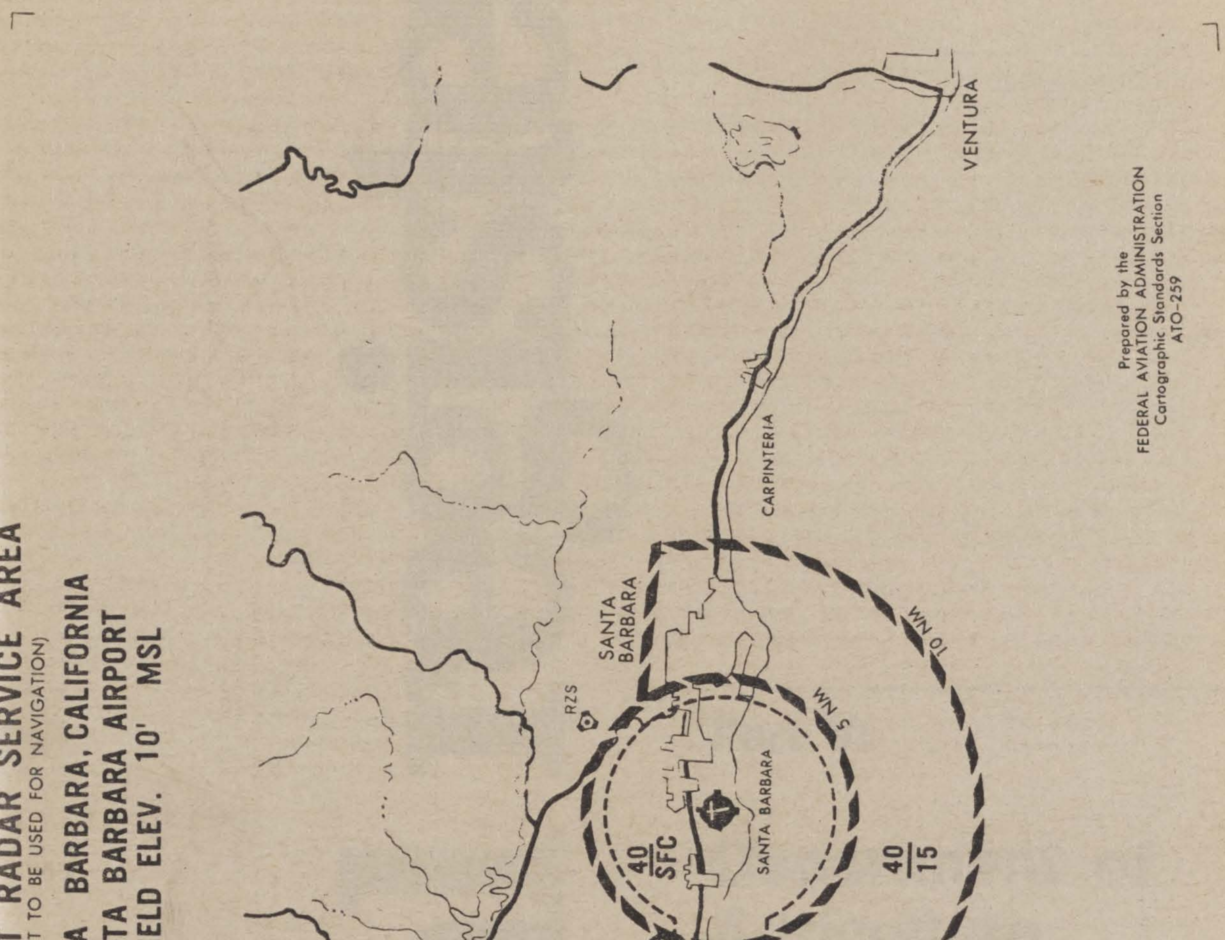

AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)
CHARLESTON, WEST VIRGINIA
YEAGER AIRPORT
FIELD ELEV. 982' MSL
V115
V309
V35
V59
77
Kettle
Kanawha
River
V133
Pocatalico
V4
Clendenin
Poca
64
50/28
50/SFC
V128
V128
119
St. Albans
Yeager
CRW
Mallory (Pvt)
5 NM
10 NM
50/28
CHARLESTON
Mammoth
Sumerco
Island (Pvt)
V115
Brushton
Miami
V260
V35
119
Seth
V258
V133
V-45
LEGEND
VFR CHECKPOINT
ARSA
ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC
Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)



AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)



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January 11, 1988

Part VI

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1136 and 1139

Milk in the Great Basin and Lake Mead Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1136 and 1139

[Docket Nos. AO-309-A27 and AO-374-A11]

Milk in the Great Basin and Lake Mead Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision merges the Great Basin and Lake Mead Federal milk orders, based on industry proposals considered at a public hearing held March 18–20, 1986, in Salt Lake City, Utah. In addition to the presently regulated marketing areas, the merged "Great Basin" marketing area would include the presently unregulated portion of the State of Utah, two counties in Wyoming, and additional counties in Idaho. The provisions of the merged order are generally patterned after those of the two separate orders, and the present Class I price differentials at Salt Lake City and Las Vegas are maintained.

One feature of the merged order not now contained in either order includes, in the pool plant definition, a manufacturing plant located within the marketing area and operated by a cooperative association. The obligation of a partially regulated distributing plant operator regulated by a State order would be determined by the value of the fluid milk products distributed in the Federal order marketing area at the difference between the Class I price paid by the handler regulated under the State order and the applicable Federal order Class I price.

For the first time in the Federal milk order system, the merged order includes a plan for pricing milk on the basis of its protein, as well as butterfat, components. The differential value of milk used in Class I and Class II would be pooled to determine producers' shares of the higher-valued uses, and the value of protein used in Classes II and III would be pooled with the value of skim milk used in Class I to determine the value of protein in producer milk.

The merger is needed to reflect changes in market structure in that the two separately regulated areas have become, in effect, one common market. Cooperative associations will be polled to determine whether producers favor the issuance of the merged order.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued February 6, 1986; published February 11, 1986 (51 FR 5070).

Suspension Order (Great Basin): Issued May 28, 1986; published June 3, 1986 (51 FR 19821).

Notice of Proposed Suspension (Great Basin): Issued July 29, 1986; published August 4, 1986 (51 FR 27866).

Notice of Proposed Suspension (Lake Mead): Issued July 29, 1986; published August 1, 1986 (51 FR 27555).

Termination of Proceeding on Proposed Suspension (Lake Mead): Issued August 29, 1986; published September 9, 1986 (51 FR 32104).

Suspension Order (Great Basin): Issued September 2, 1986; published September 5, 1986 (51 FR 31759).

Recommended Decision: Issued July 14, 1987; published July 21, 1987, (52 FR 27372).

Extension of time for filing exceptions on proposed amendments: Issued August 26, 1987; published September 1, 1987 (52 FR 32933).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Great Basin and Lake Mead marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR Part 900), at Salt Lake City, Utah, on March 18–20, 1986. Notice of such hearing was issued on February 6, 1986, and published February 11, 1986 (51 FR 5070).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, AMS, on July 14, 1987, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the heading "2. Need for merger of the orders.":

a. A new paragraph is added after paragraph 3.

b. Paragraphs 10, 11, and 20 are revised.

c. Three new paragraphs are added after paragraph 21.

2. Under the heading "3. Merged and expanded marketing area.", paragraph 5 is revised.

3. Under the heading "4. Milk to be priced and pooled.":

a. Paragraphs 7 and 8 are revised.

b. Three new paragraphs are added after paragraph 8.

c. A new paragraph is added after paragraph 14.

d. Two new paragraphs are added after paragraph 37.

e. Three new paragraphs are added after paragraph 53.

4. Under the heading "5. Multiple component pricing.":

a. Paragraphs 14 and 17 are revised.

b. Two new paragraphs are added after paragraph 17.

c. Three new paragraphs are added after paragraph 24.

d. Two new paragraphs are added after paragraph 25.

e. Paragraph 28 is revised.

f. Two new paragraphs are added after paragraph 28.

g. Two new paragraphs are added after paragraph 31.

h. Paragraphs 32 and 35 are revised.

i. Three new paragraphs are added after paragraph 36.

j. One new paragraph is added after paragraph 38.

k. Two new paragraphs are added after paragraph 41.

5. Under the heading "8. Class prices, location adjustments and component prices.", paragraphs 3, 16, and 17 are revised.

6. Under the heading "9. Handlers' value of milk for computing prices to producers.", paragraph 3 is revised.

7. Under the heading "11. Obligations of partially regulated distributing plants.":

a. Paragraph 10 is revised.

b. Three new paragraphs are added after paragraph 10.

c. Paragraphs 11 through 14 are deleted.

The material issues on the record of the hearing relate to:

1. Whether the handling of milk produced for sale in the proposed merged and expanded marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether the marketing areas of the Great Basin and Lake Mead orders should be included under one order;

3. Whether the proposed merged marketing area should be expanded to include additional territory;

If a single order is issued for the proposed merged and expanded marketing area, what its provisions should be with respect to:

4. Milk to be priced and pooled;

5. Multiple component pricing;

6. Handler reports;

7. Classification of milk;

8. Class prices, location adjustments and components prices;

9. Handler obligations, the differential pool and the skim milk/protein pool;

10. Payments to producers;

11. Obligations of partially regulated distributing plant operators;

12. Administrative provisions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Character of commerce.* The handling of milk in the proposed and expanded marketing area is in the current of interstate commerce and directly burdens, obstructs and affects interstate commerce in milk and milk products.

The marketing area specified in the proposed order, hereinafter referred to as the "merged Great Basin marketing area", includes 45 contiguous counties, of which 29 comprise the entire State of Utah. The other counties are located in Idaho (10), Nevada (4), and Wyoming (2). The principal cities in the marketing area are Salt Lake City, Utah, and Las Vegas, Nevada. The specific territory included in the marketing area is set forth in the marketing area discussion.

Handlers located in the present Great Basin area have route sales primarily in Utah and Idaho, with some sales in the Wyoming counties proposed to be included in the merged Great Basin marketing area. Handlers regulated under the Lake Mead order distribute milk in southern Nevada and southern Utah. A number of California fluid milk plants dispose of fluid milk products in Nevada.

Similarly, milk procurement for the proposed merged area crosses state boundaries. Handlers regulated by the present Great Basin order procure milk in the States of Utah, Nevada, Idaho, Wyoming and Colorado. The milk needed to supply Lake Mead distributing plants is procured from Nevada, Utah, California and, at times, Arizona and Idaho.

There are numerous manufacturing plants located within the proposed marketing area that manufacture dairy products. These products are sold in Utah, Nevada, Idaho, Wyoming and other States. Manufactured products produced in many States are offered for sale in Utah, Idaho, Nevada and Wyoming.

2. *Need for merger of the orders.* Marketing conditions in the two separately regulated marketing areas under consideration justify the issuance of a single order regulating the handling of milk in these areas. This single order would be the most appropriate means of effectuating the declared policy of the Act.

Federal regulation of milk marketing in the Great Basin area was initiated November 1, 1959, when the Great Basin order became effective. The marketing area has since been amended several times to include Elko and White Pine Counties, Nevada; portions of Cache County, Utah, and Uinta County, Wyoming; and the seven Idaho counties currently in the order. The Lake Mead order became fully effective August 1, 1973. The marketing area covered by the Lake Mead order has not been changed since then.

The merger of the Great Basin and Lake Mead orders was proposed by Intermountain Milk Producers Association (IMPA), a federation of four cooperative associations that market milk in the Great Basin and Lake Mead marketing area. IMPA represents 75–80 percent of the producers whose milk is pooled under the Great Basin order, and nearly all of the producers included in the Lake Mead pool.

Note: Subsequent to the hearing, IMPA had merged with Mountain Empire Dairymen's Association to form Western Dairymens Cooperative, Inc. (WDCI). Proponent's exceptions and comments to the recommended decision were filed by WDCI.

A witness testifying on behalf of IMPA stated that the Lake Mead marketing area is an appendage of the Great Basin market, with handlers regulated by the two orders sharing a common procurement area throughout the State of Utah. He said that the milk surplus to Class I and Class II needs in both markets is absorbed by the same manufacturing plants, located primarily in the Great Basin area. The witness also stated that handlers regulated by the two orders compete for packaged fluid milk sales to consumers, and that fluid milk products packaged in plants regulated by one order are distributed by handlers regulated by the other order. The witness pointed out that most producers in the two marketing areas market their milk through IMPA, a federation of cooperatives active in both markets.

The IMPA representative explained that IMPA assures a market outlet for all of its member producers, and balances reserve and surplus supplies for the Lake Mead and Great Basin markets. He said that IMPA, as a handler under both the Lake Mead and Great Basin orders, furnishes bulk and packaged milk to other handlers and operates the fluid milk distributing plants and manufacturing plants formerly operated by the cooperative associations comprising the federation.

The witness stated that the proposed merger would not change the number of fully-regulated handlers, and would cause little change in the cost of milk to handlers or returns to producers. He claimed that additional supplies of milk would not be attracted to the market, although increases in the production of present producers and the conversion of manufacturing-grade producers to Grade A would be accommodated. According to the witness, merger of the orders would not displace present production, discourage market entry by new producers or affect current price alignment between Las Vegas and Salt Lake City handlers or between handlers at those locations and in other marketing areas.

A witness representing Rockview Dairies, Inc., testified in opposition to the proposed merger. Rockview Dairies operates a California distributing plant and two dairy farms which are nonmember producers for Anderson Dairy, the operator of a pool distributing plant under the Lake Mead order. The witness stated that although there appears to be a shared production area for the two orders, he saw little evidence of overlap of sales by handlers regulated under the Lake Mead and Great Basin orders and little movement of dairy products between the two orders. He observed that there would appear to be as much commonality of sales and production areas between the Great Basin and Southwestern Idaho-Eastern Oregon marketing areas, but that no merger of those orders had been proposed. The witness claimed that a merger of the Lake Mead and Great Basin areas would result in lower blend prices paid to Lake Mead producers. He explained that milk pooled under the Lake Mead market is primarily used in Class I, with little Class II use and limited opportunities for disposing of surplus milk, while the Great Basin market uses a much larger percentage of its milk in Class II and Class III products. As a result of a merger, he said, the two nonmember producers shipping their milk to Anderson Dairy would have to pool their higher-valued Class I utilization with the much greater quantity of Great Basin milk that is used more predominantly in the lower-valued classes of utilization.

According to the Rockview Dairies representative, Anderson Dairy, the largest distributing plant regulated under the Lake Mead order, recently contracted with a California dairy farm (Rockview) for the farm's total milk supply, and made arrangements with a California nonpool plant to buy any of the farm's production surplus to Anderson's fluid milk needs. The witness predicted that as a result of Anderson's new procurement arrangements, the Lake Mead Market would be much less dependent on manufacturing plants located in the Great Basin marketing area for the disposal of milk production surplus to the fluid milk needs of the market.

A brief filed on behalf of Rockview Dairies, Inc., described proponent's proposal to merge the orders as an attempt by IMPA to establish a monopoly in the marketing area and to obstruct interstate commerce. The brief quoted proponent witness as testifying that the merged order proposed by IMPA would allow the milk produced in Clark County, Nevada (Las Vegas area), to be marketed there "rather than making way for some other producers to come into the market to be qualified." The Rockview Dairies' brief also stated that the record contains no evidence suggesting that the Lake Mead order fails to protect the interests of producers and consumers or to promote the orderly flow of the milk supply to the market, or causes any disruption of the orderly exchange of milk in interstate commerce.

The record indicates that the Lake Mead and Great Basin marketing areas have become interrelated to such an extent that a merger is the most appropriate means of regulating milk marketing in the area involved. When the two orders were promulgated, they regulated the handling of milk in areas that were clearly distinguishable as separate markets for particular handlers and producer groups. Changes in marketing practices and market structure since that time, however, have caused these separately regulated areas to become substantially interrelated in both distribution and supply arrangements. With a single organization, IMPA (which has now merged with Mountain Empire's Dairymen's Association to form WDCI), marketing the milk of most of the producers supplying milk to the present marketing areas, it is reasonable to expect that the interrelationship of the two areas will become even more pronounced over time.

With the formation of IMPA, cooperatives that formerly marketed the milk of member producers within two separate local markets have combined to market milk and balance milk supplies for the two markets as a whole. The provisions of the present individual orders that involve pooling qualifications do not encourage or promote efficient handling and hauling of milk throughout the area encompassed by the two orders. The proposed merger would assist IMPA in marketing the milk of its members in a more effective and efficient manner without encumbrances exerted on the federation's marketing system by the provisions of the separate orders. At the same time, the merger would have little effect on other handlers, consumers and nearly all of the nonmember producers in the merged marketing area.

Proponent cooperative federation operates a fleet of trucks to move member producer milk and directs milk to distributing plants regulated under both orders at the times and in the amounts needed. Under the present provisions of the two Federal orders, the federation must move producers' milk in a manner that will maintain the producer status of its members under either or both orders in order to ensure an adequate reserve supply of milk for both orders. In determining the order under which a producer's milk should be pooled, the federation must consider which plants need milk for fluid and Class II use, which producers' milk is to be included on particular farm pick-up routes, and the need to keep enough dairy farmers qualified as producers on both markets to assure the availability of milk to distributing plants in both markets on short notice. The federation sometimes must shift the market on which a producer's milk is pooled from one Federal order to another because of conditions such as a recent strike of workers at California milk plants. One result of the strike was increased demand for fluid milk in Las Vegas, necessitating the pooling of producers previously associated with the Great Basin market on the Lake Mead market. Another cause of instability in the relative milk supplies of the two markets is the nature of demand in Las Vegas. The number of people in Las Vegas varies widely, increasing significantly over weekends and holidays, and causing large shifts in the demand for fluid milk, both by consumers and by distributing plants.

Adoption of the merger proposal will equalize marketing conditions and prices to producers between the two marketing areas and contribute to greater efficiency by allowing distributing plants to be supplied from the most favorably-located producers without regard to the shipping requirements of two different orders. The distances milk is required to be hauled to qualify for pooling would be shortened, and hauling costs thereby reduced. Accounting and reporting requirements will be reduced if handlers no longer need to be concerned about two separate sets of provisions, two different reporting forms, or the complexities of dealing with the provisions regulating transfers of milk and milk products between orders. The merger would help to reduce unnecessary regulation and reduce costs by relieving the market administrator of duplicating many reports and duties involved in administering two orders instead of one.

It is apparent that, although route disposition from plants regulated under each of the separate orders may not have expanded into the other order area to any great degree, milk supplied by Great Basin producers and bottled in the Great Basin marketing area is increasingly being distributed in the Lake Mead area by Lake Mead handlers. At the same time, it is clear that nearly all of the milk historically associated with the Lake Mead order has become increasingly dependent on distant manufacturing plants in the Great Basin marketing area as outlets for milk produced in excess of the Lake Mead market's fluid milk requirements. If, as the Rockview Dairies' representative testified, the largest distributing plant operator in the Lake Mead market develops an independent supply of milk from California, the need for access to outlets for surplus milk supplies by Lake Mead producers will become even more acute.

Dependence by producers traditionally supplying the Lake Mead market upon the dwindling number of

Lake Mead pool distributing plants [1] for a pooling base is likely to generate disorderly marketing conditions as producers struggle to assure that their milk will share in the marketwide pool. Data in the hearing record indicate that in May 1985, most of the Class I needs of the Lake Mead market could be met by milk produced in California and Clark County, Nevada. During that month only a small proportion, approximately 13 percent, of the milk produced in Utah and pooled on the Lake Mead order was actually needed at Lake Mead distributing plants for Class I use. Testimony by the IMPA witness indicated that under this situation the federation intends to maintain Lake Mead pool status for the Grade A milk of all of its member producers traditionally associated with the Lake Mead market, regardless of whatever excessive hauling costs or complex accounting and reporting procedures may be involved in doing so. The federation's incentive for continuing to assure that its producers are qualified for pooling under the Lake Mead order is the historically higher blend price paid to producers under the Lake Mead order than under the Great Basin order. During the years of 1983–85, the announced blend price paid to Lake Mead producers exceeded the Great Basin blend price by an average of approximately 15 cents per hundredweight.

With milk supplies from the southern and central Utah production area available to both the Great Basin and Lake Mead marketing areas and comprising a necessary reserve for the Lake Mead market, equilibrium in the prices paid to producers located in that area is necessary to avoid disorderly marketing conditions. Maintenance of the present pooling standards for a separate Lake Mead order would require the federation to incur unnecessary, expensive and inefficient marketing practices in order to maintain the pool status of its milk on the Lake Mead market.

In the absence of a merger, the federation would be able to assure an adequate supply of milk at its Lake Mead distributing plants while maintaining the Lake Mead pool status of as much of its producers milk as possible only by calculating each month the producer milk that would be pooled under the Lake Mead order. Enough milk would have to be associated with the Lake Mead order to be able to meet the plants' fluid milk requirements on the days the plants receive milk without associating so much milk with the order that the amount of milk diverted to manufacturing would exceed the order's diversion limits. Any milk in excess of that qualified for pooling on the Lake Mead market would have to be pooled under the Great Basin order. Under such conditions, the Great Basin pool would be carrying almost the entire seasonal reserve supply of milk for the Lake Mead marketing area. In addition, the federation would be incurring unnecessary trouble and expense for the sole purpose of marketing its members' milk to their greatest benefit.

The quotation of the IMPA witness from the hearing record used in the Rockview Dairies' brief refers to the requirement of the Lake Mead order that one day's production of a producer's milk must be received at a pool distributing plant each month in order for the producer's total production for the month to be pooled. The IMPA witness testified that, in order for milk produced in southern Utah, more than 200 miles from Las Vegas, to be pooled under the Lake Mead order, some of it must be shipped to Las Vegas each month, sometimes displacing milk produced in the Las Vegas area. The witness' statement was not an assertion that milk from other areas should not be marketed in the Las Vegas area, but rather that the provisions of the order should not require milk to be moved into the Las Vegas area solely in order to be pooled, necessitating the removal of locally-produced milk to make room for it. Provisions encouraging such uneconomic and inefficient handling of producer milk and the testimony that such handling has been engaged in are evidence that the Lake Mead order fails to protect the interests of consumers and handlers by failing to promote the orderly flow of the milk supply to the market. Adoption of the proposal to merge the orders does not require a finding that the Lake Mead order causes a disruption of the orderly exchange of milk in interstate commerce, but merely that such exchange would be improved by a merger of the orders.

The federation probably would be able to continue the Lake Mead pool status of some of its producers without merging the orders and without undertaking unnecessary and uneconomic hauling if the present Lake Mead diversion limits were relaxed. Relaxation of those limits would allow more producer milk to be pooled on the Lake Mead market without an increase in actual deliveries to pool distributing plants. However, increased diversion limits would allow more milk to be pooled under the Lake Mead order, causing a decline in Lake Mead prices to producers that would bring them into balance with Great Basin producer prices.[2]

For the reasons discussed above, the inevitable result of existing marketing conditions under the two separate orders is the uneconomic and inefficient hauling practices undertaken by the federation to assure the pool status of its members under the Lake Mead order. Any attempt to avoid such practices by relaxing the present Lake Mead pooling standards would have the effect of reducing the uniform price to Lake Mead producers to a point at which it will be in equilibrium with the Great Basin uniform price to producers similarly located. A merger of the two orders is the best means of accomplishing the same ends by assuring that participants in the merged marketing area will have no incentive to conduct their operations in other than the most efficient possible manner. The efficiencies of operation that may be expected to result from a merger of the two orders should, on the whole, benefit milk producers, handlers and consumers in the marketing areas affected.

As argued by the Rockview Dairies representative, the lower Class I utilization percentage in the present Great Basin area, relative to Lake Mead, can be expected to cause some reduction in prices paid to all producers delivering their milk to plants located in the present Lake Mead marketing area when the orders are merged. However, producers in the Lake Mead area would share in the 30-cent higher Class I price effective at locations in most of the present Great Basin marketing area, which would counteract some of the effect of the present Great Basin market's lower Class I use on returns to producers now supplying the Lake Mead market. In 1985, the average uniform price paid to producers whose milk was pooled under the Great Basin order was $12.61. The range in Great Basin uniform prices during 1985 was from $12.07 to $13.74. The average uniform price paid to Lake Mead producers during 1985 was $12.78, with a range of $12.14 to $13.78. The difference in prices paid to producers under the two orders, therefore, represents just over 1 percent of the uniform price under either order.

Exceptions to the recommended decision filed by Rockview protested the

[1] Official notice is taken of the cessation of bottling operations at the IMPA Cedar City, Utah, plant in August 1986.

[2] Official notice is taken of the dramatic increase in the volume of milk pooled under the Lake Mead order while diversion limits were suspended during early 1986, and the resulting decline in the uniform prices paid to producers.

merger of the Lake Mead and Great Basin orders and requested that the Lake Mead order be suspended. Rockview argued that at the time of the hearing, only a small percentage of the Class I sales in the Lake Mead marketing area was distributed by Great Basin handlers, and that no sales by Lake Mead handlers were distributed in the Great Basin area. Lacking any overlap in sales, Rockview stated, the only common element between the two orders is WDCI, the proponent cooperative that pools its members' milk under both orders. Rockview argued that if the marketing of milk by a common cooperative association is a legitimate basis for merging orders, then a merger of all of the orders in which WDCI markets milk (Orders No. 134, 135, and 137 as well as 136 and 139) should be considered. Rockview stated that prices to producers would not be equalized by the merger because the 30-cent location adjustment to be effective at Las Vegas will reduce the price paid to Rockview by 30 cents below the announced blend price under the proposed rule, reducing permanently the price paid to Rockview. The handler characterized the order merger as "creating a monopoly on the Class I dollars that are generated in the Lake Mead marketing area for the added benefit to the co-op members at the sole cost to Rockview Dairies."

The decision to merge the Great Basin and Lake Mead orders does not base the need for a merger on the sales competition. The principal reason for the merger is to remove the incentive for proponent cooperative to haul milk from common production areas in Utah to southern Nevada plants and back to Utah for processing simply to share in the proceeds of the Lake Mead pool. As far as the record indicates, only in the two marketing areas proposed to be merged does the cooperative have producers whose milk is sometimes needed at fluid plants in one order area and sometimes must be hauled to surplus manufacturing plants in the other order area. Of the milk currently pooled under the present Lake Mead order, the largest proportion is that of cooperative members. The minus 30-cent location adjustment also will apply in southern Utah where the cooperative's manufacturing plant for surplus Lake Mead production is located. Therefore, proponent cooperative will not realize any higher returns on the present Lake Mead volume of milk than will nonmember producers. The decision continues the present Class I price levels for Las Vegas and Salt Lake City, as proposed by proponents.

Suspension or termination of the Lake Mead order would tend to result in the Great Basin producers carrying the burden of the reserve supply for Nevada fluid milk handlers without sharing fully in the Class I proceeds from such plants' sales. As Rockview contended, suspension of the order would remove the incentive for uneconomical movements of milk. However, the merger would have the same effect. The merger has the added benefit of assuring that Nevada fluid milk plant operators will pay prices that are comparable to prices paid by the regulated handlers in California and Utah that compete with them for sales in Nevada. Without regulation, the Nevada plants would be free to pit Nevada, California and Utah producers against each other in bidding for the Nevada sales outlets. Such potential for destructive competition among producers is a primary reason for the implementation of milk orders.

In view of the marketing conditions discussed above, separate orders for the Great Basin and Lake Mead marketing areas are no longer compatible with the current marketing practices in these regulated areas. The adoption of a single regulation for the combined area would insure more orderly marketing through application of the same regulatory provisions to all handlers and producers associated with the merged order.

The cooperative federation proposed that the order for the merged marketing area follow the format of the present Lake Mead order, as it was issued more recently than the Great Basin order. Proponent pointed out that the provisions of the two orders do not differ greatly, and the proposed order includes most of the provisions of the individual orders except for certain modifications considered necessary to adapt the proposed order to the marketing conditions existing in the proposed merged marketing area. The provisions common to both orders, with certain modifications, have been appropriate in achieving the objectives sought by the regulatory plans for both marketing areas. Accordingly, on the basis of the record evidence, it is found and determined that the order provisions common to both orders would be appropriate for achieving orderly marketing conditions in the proposed merged and expanded marketing area. Only the significant modifications or specific provisions that were at issue will be dealt with in the decision. Wherever possible, the section numbers containing specific provisions have been designated to conform with the format of order provisions that was incorporated into 39 other Federal milk orders in 1974. Uniform numbering between orders should facilitate references to specific provisions.

The order adopted herein would continue the use of the part number for the present Lake Mead order, Part 1139, as proposed by the merger proponents. The amended Part 1139, upon issuance, would supersede Part 1136. The merged marketing area should retain the name "Great Basin", proposed by IMPA as being more descriptive of the territory included in the merged marketing area than the name "Lake Mead." The name "Intermountain" for the marketing area, also proposed by IMPA, would be more descriptive of a larger marketing area extending eastward of the boundaries of the proposed merged order.

Although the present two orders would no longer exist upon effectuation of the merged Great Basin order, this merger action is not intended to preclude the completion of those procedures that would otherwise have existed under the separate orders with respect to milk handled prior to the effective date of the merger. Such procedures which would need to be completed after the effective date of the merger include the announcement of certain class prices and butterfat differentials, submission of reports, computation of uniform prices, payment of obligations, and verification procedures. The provisions of the merged order would apply only to that milk handled after the effective date of the merger.

3. *Merged and expanded marketing area.* The marketing area of the proposed merged order should include all of the territory in the presently designated marketing areas of the Great Basin and Lake Mead orders. Certain additional territory between and adjacent to the two present marketing areas also should be part of the proposed merged marketing area. The additional territory to be included are the entire Idaho counties of Caribou, Oneida and Power; Lincoln County, Nevada; the Utah counties of Beaver, Garfield, Kane, Piute, Rich, San Juan and Wayne; and Lincoln County, Wyoming. Previously unregulated portions of Cache, Iron and Washington counties, Utah; Uinta County, Wyoming; and Clark County, Nevada, also would be included. All territory within the boundaries of the designated marketing area which is occupied by government (municipal, State or Federal) reservations, installations, institutions or other establishments, likewise should be a part of the marketing area. Where such an establishment is partly within and partly without such territory, the

entire establishment should be included in the marketing area.

The merged and expanded marketing area consists of the entire State of Utah, ten southeastern Idaho counties, the four easternmost Nevada counties, and two counties in the southwest corner of Wyoming. The total population of the merged and expanded marketing area, according to the 1980 census, was approximately 2,214,500 people, or about 170,700 more people than the two separate order areas contain. The territory proposed to be added to the merged order, therefore, increases the population of the merged marketing area by less than ten percent over that of the separate marketing areas.

The territory to be added to the merged marketing area was proposed for inclusion by IMPA. Proponent described all of the added territory as adjacent to counties presently regulated, sparsely populated, and primarily dependent upon handlers regulated by the Great Basin and Lake Mead orders for dispositions of fluid milk products. In response to questions, the IMPA witness stated that there is some distribution in some of the proposed area by handlers regulated under the Southwestern Idaho-Eastern Oregon and Western Colorado orders, but that dispositions in those portions of the area by Great Basin handlers predominate. Proponent justified the addition of entire counties and the presently unregulated portions of counties partially included in the present marketing areas by explaining that the use of county boundaries will make it easier for handlers to determine which of their sales of fluid milk products are inside and which are outside the marketing area. Handlers must report sales inside and outside the marketing area so that the market administrator will have a basis for determining whether or not the handlers meet pooling qualification standards.

The IMPA witness testified that no additional handlers would become regulated as a result of including the proposed additional territory in the merged marketing area. However, in response to questioning, the witness conceded that a manufacturing plant located at Thayne, Wyoming, and operated by IMPA would be included as a pool plant under the pool plant definition of the proposed order. In addition, he said, several producer-handlers would be included in the marketing area because of the inclusion of additional territory. It is expected that these producer-handlers would be exempt from the pooling and pricing provisions of the proposed order.

In view of the record evidence regarding marketing conditions in the proposed territory, and in view of proponent's testimony that such territory is supplied with fluid milk products primarily by handlers currently regulated under the two existing orders, the marketing area of the merged orders should be defined as proposed. There was no opposition in the hearing record to the addition of the proposed territory to the marketing area.

4. *Milk to be priced and pooled.* It is necessary to designate clearly what milk and which persons would be subject to the merged order. This is accomplished by providing definitions to describe the persons, plants and milk to which the applicable provisions of the order relate.

The following definitions included in the proposed order will serve to identify the specific types of milk and milk products to be subject to regulation and the persons and facilities involved with the handling of such milk and milk products. Definitions relating to handling and facilities are "route disposition," "distributing plant," "supply plant," "pool plant" and "nonpool plant". Definitions of persons include "producer," "handler," "producer-handler," "cooperative association," and "federation." Definitions relating to milk and milk products include "producer milk," "other source milk," "fluid milk product," "fluid cream product" and "filled milk". Some of these definitions were of particular issue at the hearing or are substantially different than those presently contained in either the Great Basin or Lake Mead orders. Such definitions are discussed below.

Pool plant. It is necessary to establish minimum performance requirements to distinguish between plants that serve the fluid needs of the regulated market and those that do not serve the market to a degree that warrants their sharing in the Class I utilization of the market by being included in the marketwide pool. The pooling standards for distributing plants, supply plants and cooperative-operated manufacturing plants that are included in the attached order are the most appropriate means of determining which plants should be eligible to share in the marketwide pool under the marketing conditions present in the merged marketing area.

The pool plant definition of the merged order should be based on that in the present Great Basin order, with the addition of a plant operated by a cooperative association and located within the marketing area. Certain features of the pooling standards for a distributing plant should be revised to conform with current marketing conditions existing in the proposed combined and expanded area. The pooling standards for distributing plants under the proposed order should reflect the current Great Basin standards of total route dispositions and a percentage of receipts, as proposed by proponents. Those standards are 50 percent for the months of September through February, 45 percent in March and April, and 40 percent in the months of May through August. The proposed requirement that a pool distribution plant dispose of at least 15 percent of its receipts as route disposition in the marketing area, also from the present Great Basin order, should also be adopted. However, a modification of the proposed order as published in the hearing notice that would include milk diverted from a distributing plant as a receipt for purposes of determining pool qualification should not be adopted.

Testimony on behalf of IMPA and its post-hearing brief supported the distributing plant percentage pooling standards adopted in this decision, describing them as varying inversely with the seasonal pattern of milk production. Proponent witness stated that qualification percentages lower than the 50 percent standard currently in the Lake Mead order would have no adverse effects on distributing plants in the Lake Mead market. At the same time, he said, Lake Mead handlers would have no difficulty in meeting the Great Basin 15 percent in-area requirement rather than the 10 percent of route disposition required to be sold inside the marketing area by pool plant operators under the Lake Mead order. There was no disagreement with either assertion from any other participants in the proceeding.

Although it was not included in its initial proposal as published in the hearing notice, the merger proponent proposed at the hearing that milk diverted from a distributing plant be included as part of such plants' total supply in determining its qualifications as a pool plant. As the pool distributing plant definitions of both the Lake Mead and Great Basin orders now include diversions to nonpool plants as receipts for determining pool plant qualifications, the witness explained the omission from the proposal as a typing error. Proponent did not attempt to explain why such diversions should be included as receipts for pool qualifications.

Two proprietary handlers, K.D.K, Inc. and Gossner Foods, Inc., filed post-hearing briefs objecting to the inclusion of diverted milk as a receipt in determining pool plant qualification under the proposed merged order. The handlers complained that adoption of such a provision, along with other provisions proposed by IMPA, such as the inclusion of cooperative manufacturing plant in the pool plant definition, would severely disadvantage the operations of proprietary handlers vis-a-vis those of cooperatives in retaining their nonmember producer suppliers and in being able to compete for fluid milk accounts. Specifically, the handlers asserted that adoption of the proposed cooperative manufacturing pool plant definition (discussed below), IMPA would be able to pool much more milk than would proprietary handlers without having any greater proportion of milk used in Class I products.

Regardless of whether proponent's omission of diversions from the receipts to be considered in determining the pool qualification of distributing plants was due to a typographical error or not, the record of this proceeding indicates that diversions should not be included as receipts in such determinations. The percentage requirements of the pool distributing plant definition contained in the adopted merged order will be sufficient to ensure that a plant that qualifies as a pool distributing plant will be engaged primarily in the processing and disposition of fluid milk products, and that enough of those fluid milk products are distributed within the marketing area to demonstrate the plant's involvement in supplying the market's fluid needs. Provisions intended to limit the amount of milk a handler may associate with the pool would be included more appropriately under diversion limits. There is no reason to require proprietary handlers to meet standards not required of a cooperative association. Accordingly, diversions should not be included as receipts in determining pool distributing plant qualifications.

Proponent excepted to the omission from the pool plant definition of a distributing plant's diversions as receipts in determining pool plant qualifications. Proponent's exception, in addition to reiterating its earlier arguments, is based on the fact that the recommended provision would have the effect of lowering the standards to be met by pool distributing plants to less than half of the current requirements. Proponent speculated that omission of diversions from the receipts from which a distributing plant's pool status would be computed may, in combination with more liberal limits on diversions of pooled milk, allow substantial quantities of reserve milk for other markets to be pooled on the Great Basin order.

The pooling standards and diversion limits adopted for the merged order area are needed to accommodate the pooling of reserve milk supplies now associated with the market. The record does not indicate that there are substantial quantities of reserve milk associated with fluid milk distributing plants in other markets that could become regulated under the merged order.

The provision of the order that requires 15 percent of a handler's receipts to be distributed as route disposition within the marketing area for a distributing plant to qualify for pooling should assure that any handler so qualifying will have a substantial commitment to supplying the Great Basin market. If a handler from outside the marketing area were to qualify for pooling on the basis of in-area sales, however, it is more likely that the Great Basin market's blend price would be enhanced by the addition of Class I use rather than diluted by excessive supplies of reserve milk.

A provision currently contained in the Great Basin order that allows producer milk delivered by a cooperative to the pool distributing plant of another handler to be included as a receipt at the cooperative's distributing plant, and the amount of such milk assigned to Class I to be included in the cooperative plant's pool qualification should not be retained in the merged order. Although included in IMPA's proposed order, proponent agreed that the provision may not be helpful to the federation under the merged order, given some of the other provisions that were proposed for inclusion. IMPA should experience no difficulty in associating all of its historical supplies of producer milk with the merged order, and thus should have no need to use other handlers' receipts and dispositions to qualify its own plants. Adoption of the provision would only cause the market administrator to make many extra calculations in determining pool plant qualifications.

The definitions of a pool supply plant and a pool plant primarily engaged in the distribution of aseptically processed and packaged fluid milk products should be adopted as proposed by IMPA. As noted by proponent witness, the pool supply plant definition is little different from that contained in both orders now, while the definition of a pool distributing plant disposing of aseptically processed and packaged fluid milk products is the same as that contained in the present Great Basin order. None of the provisions of the two definitions was opposed by any interested person.

A new category of pool plant, not now defined in either the Great Basin or Lake Mead orders, should be included in the merged order. IMPA proposed that any manufacturing plant operated by a cooperative association, which is not covered under the other pool plant definitions and is located within the marketing area, be defined as a pool plant.

The cooperative would have to deliver at least 45 percent of its producer milk to pool distributing plants during each month or during the 12-month period ending with the current month to continue the pool status of such a plant.

Proponent witness testified that inclusion of the definition of a cooperative-operated manufacturing pool plant would allow IMPA to integrate its operations and better enable the federation to furnish other handlers with milk, providing supplemental supplies when needed; absorb surplus milk not needed by other handlers; process its own reserve supplies in its members' best interests; reduce the cost of transporting milk from farm to market and maintain its members as producers under the order. The witness explained that IMPA operates a number of fluid processing plants and manufacturing plants located throughout the proposed marketing area to serve the fluid needs of the market and handle the market's reserve supplies of milk. He said that several of the manufacturing plants, particularly those at Beaver, Utah; Idaho Falls, Idaho; and Thayne, Wyoming, are located near areas of high milk production. From those areas, he stated, producer milk can be shipped directly to distributing plants as needed or delivered to the nearby manufacturing plants when not needed for fluid use. The witness testified that order provisions requiring certain percentages of producer milk or a given number of days of production for each producer to be received at pool plants each month often require the federation to move some milk from the production areas to pool plants when it is not needed there. Such movements, he said, often displace other, close-in milk that must, in turn, be moved long distances to manufacturing outlets.

Because IMPA represents a large majority of the producers on the market, the witness claimed, the federation is the most likely source of supplemental milk supplies for other handlers, and absorbs most of the market's surplus milk. He introduced data that showed the daily variations in volumes of milk delivered to distributing plants and to manufacturing plants, pointing out that most distributing plants receive significant volumes of milk on five or fewer days per week. Because milk production is relatively constant on a day-to-day basis, daily deliveries to manufacturing plants, as shown by the exhibit, vary accordingly. According to the witness, designation of the cooperative manufacturing plants as pool plants will allow IMPA to provide better service to fluid milk handlers, to handle milk surplus to distributing plant requirements more efficiently, and to reduce the cost of unnecessary shipments to distributing plants for the sole purpose of keeping its producers pooled.

Proponent witness emphasized the desirability to the federation of maintaining producer status under the order for all of its members. He stressed that the federation cannot decide which of its members' milk should be pooled and which should not if the federation is not able to qualify all of their milk for pooling. Such decision, he claimed, would pit dairy farmers against each other for a share of the fluid market. The witness stated that the principal source of difficulty in qualifying all of the federation's producer milk for pooling is the fact that Class I use is not increasing as rapidly as milk production. He described the recent large surge in production as not only a local but a national problem, and asserted that the cooperative associations cannot control production increases. Proponent witness testified that adoption of the proposed pool plant definition would not result in a large volume of currently unpooled Grade A milk becoming eligible for pooling. He said that the only likely source of additional producers that would be added to the pool would be dairy farmers currently producing manufacturing grade milk who may convert their operations to Grade A.

In comments filed by proponent on the recommended decision, proponent stated that making the pool status of any or all cooperative-owned manufacturing plants mandatory may impede the ability of the cooperative association or federation to maintain the pool status of its members and the market-balancing functions of the association. There is no basis in the record of this proceeding to make the pool status of cooperative-owned manufacturing plants mandatory. If the cooperative association requests pool status for any such plant before the first day of the month for which pool status is desired, the manufacturing plant may be pooled as long as at least 45 percent of the cooperative's member milk is received at pool distributing plants during that month or the 12-month period ending with that month. However, if the cooperative association chooses pool status for some of its manufacturing plants but not for others, both the 45-percent delivery requirement and the order's diversion limits will apply to all of the cooperative's activities in total.

Addition of a cooperative manufacturing plant to the pool plant definition was opposed in post-hearing briefs filed by Gossner Foods, Inc., and K.D.K., Inc., two proprietary pool handlers under the present Great Basin order, and in exceptions filed in response to the recommended decision by Gossner Foods. The handlers claimed that the proposed definition would give cooperative associations a large advantage over proprietary handlers in being able to maintain the pool status of their producers. The handlers stated that allowing member milk deliveries to manufacturing plants to be considered as deliveries to pool plants would have the effect of liberating the cooperatives from the constraints of any diversion limits, particularly in view of the diversion limits proposed by IMPA for other handlers (discussed below). As pointed out in the brief filed by K.D.K., Inc., some of the reasons behind IMPA's desire for such a pool plant definition—assuring producers of continuing pool status, reducing the cost of transporting milk from farm to market, and handling reserve supplies of milk in the most efficient manner possible—apply equally to any handler with its own producers.

However, some of the reasons for IMPA's proposal for a cooperative manufacturing plant do not apply to proprietary handlers. Proponent witness repeated several times the federation's commitment to supplying the fluid needs of the market, whether through its own fluid processing plants, or as supplemental or full-supply deliveries to other handlers. Proponent also expressed a sense of the responsibility of a cooperative's role in absorbing the market's surplus milk in manufacturing products. It is apparent from the hearing record that adoption of a cooperative manufacturing pool plant definition would enable IMPA to supply milk to fluid handlers and handle much of the market's surplus milk supply more efficiently than is possible under the present provisions of the separate orders, while assuring that all of the milk of its member producers remains eligible for pooling. IMPA would be able to oversee the movement of milk to where it is needed and assure that it is moved most economically without concern about meeting the pooling standards relating to each plant's supply of milk. At the same time, the requirements that 45 percent of the cooperative's, or federation's, milk supply be received at pool distributing plants during the current month or the 12-month period ending with the current month would assure that the association does not pool large amounts of unneeded supplies of milk under the order. In effect, the requirement that a particular percentage of a cooperative's milk be received at pool distributing plants would serve as a limit on the ability of the cooperative, or federation of cooperatives, to move milk directly to either pool or nonpool manufacturing plants.

The objective desired by proponent in adopting a pool plant definition that includes a cooperative manufacturing plant would best be achieved by establishing a percentage requirement of deliveries to pool distributing plants of 45 percent, adjustable upward or downward by 10 percentage points by the Director of the Dairy Division as marketing conditions require. IMPA's proposal, as published in the hearing notice, included a requirement that 60 percent of the cooperative's (or federation's) milk supply be received at pool distributing plants in order for the cooperative's manufacturing plants to be pooled. However, after studying more closely IMPA's actual deliveries to distributing plants, proponent witness stated that 50 percent appeared to be a more realistic number. In suggested order language contained in the post-hearing brief filed on behalf of IMPA, the percentage had declined to 45 percent, with no explanation or justification. However, examination of data introduced at the hearing for the two separate orders combined supports the 45 percent requirement. Producer milk pooled under the two separate orders in 1985 had increased more than 30 percent, while Class I use increased less than eight percent. As a result, the percentage of producer milk used in Class II and III increased more than 10 percentage points, to nearly 50 percent. There is no reason to believe that increase in milk production in the merged area will slow very much in the near future, or that Class I use will increase greatly enough to keep pace with production increases. In addition, milk production in the area could be increased by approximately 20 percent by the conversion of IMPA's Grade B producers to Grade A. It would seem prudent, if the delivery requirement of milk to pool distributing plants for cooperative manufacturing pool plants is not to be obsolete before it is implemented, to set a standard of 45 percent.

Although not specifically included in the hearing notice, a provision allowing the pool plant percentage requirements to be raised or lowered 10 percentage points by the Director of the Dairy Division should be adopted. Such a temporary revision of percentage requirements should apply also to pool distributing plant and pool supply plant standards, and to the limits on the amount of a handler's milk supply that may be delivered directly from producers' farms to nonpool plants. When questioned by the attorney for Kraft, Inc., about the desirability of such a provision, the proponent witness indicated no objection to its inclusion. In the post-hearing brief filed on behalf of Kraft, Inc., adoption of such provision was supported as providing "additional flexibility during a time of changing and uncertain production and marketing conditions." In view of the difficulty of projecting milk production and use trends in the marketing area, such a provision would make suspension of the percentage pooling standards and diversion limits unnecessary if milk production increases are greater than anticipated, and would also allow the delivery requirement percentage to be increased if milk supplies for fluid use become tighter than expected.

Nonpool plant. The "nonpool plant" definition of the merged order should specify those categories of plants which are associated with the market but not to the degree that they should be fully regulated by the order. As used herein, a nonpool plant means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. A description of the specific categories of nonpool plants included in the "nonpool plant" definition follows.

A plant of a "producer-handler" would be considered a nonpool plant since, by the nature of the operation, as discussed later, the plant is specifically exempt from pool status.

An "other order plant" would be a plant that is fully regulated under another Federal order. As such, it cannot be a pool plant under this order.

As proposed by the merger proponent and adopted herein, an "exempt plant" means a distributing plant with an average route disposition in the marketing area of less than 1,000 pounds per day. Also included in the "exempt plant" definition are a plant operated by a government agency or by a college or university and a plant from which all of the route disposition is for charitable purposes without remuneration. The present Great Basin order contains a definition of an "exempt plant" as "a governmental agency, Brigham Young University or any approved plant from which the total route disposition is to individuals or institutions for charitable purposes and is without remuneration from such individuals or institutions." Although the proposed merged order did not include exemptions for the latter descriptions of plants, proponent witness testified that IMPA would support exempt plant status for government agency and college plants as long as such plants are not engaged in commercial distribution in competition with regulated handlers, and for plants operated solely for charitable purposes.

Witnesses representing Brigham Young University and the Church of Jesus Christ of the Latter Day Saints (LDS Church) testified that the exemptions from regulation currently afforded their milk plants are necessary to their plants' operations, and that neither institution is involved in commercial sales of fluid milk products. The LDS Church witness stated that the Deseret Milk Plant in Salt Lake City processes its own farm production and distributes milk products free of charge to the poor and needy, as determined by a bishop. He testified that in 1985, the milk plant processed and disposed of approximately 10 million pounds of milk. In order to balance the milk needs of the plant, he said, approximately 500,000 pounds of surplus milk was sold to IMPA, and about 175,000 pounds of supplemental supplies were purchased from IMPA. The witness stated that the LDS plant sells some surplus milk to IMPA, and has no commercial sales of fluid milk products.

The witness representing Brigham Young University (BYU) testified that the operation of a dairy herd and a dairy processing plant are essential for continuing the University's teaching and research programs in dairy production and manufacturing. He stated that the University can afford to operate the farm and plant only if they are fully functional and paying their own way by supplying most of the dairy products used in BYU's food services system. The witness testified that the BYU dairy operation has been exempt from the terms of the Great Basin milk order for many years, and that such an exemption is necessary for the continued operation of the farm and plant. He said that in the past supplemental milk supplies have been purchased, and that production in excess of campus demand has been sold. At the present time, he stated, approximately one-third of the BYU herd's production is sold as surplus.

In testimony at the hearing and in a post-hearing brief, IMPA stated that plants distributing less than 1,000 pounds of milk per day in the marketing area would not have a destabilizing effect on the market if such plants are not regulated. The IMPA witness testified that exemption of plants only casually associated with the market would eliminate needless regulation. He stated also that IMPA would support continued exemption for the LDS plant and for the BYU dairy operation on the basis that neither entity is involved in disposing of fluid milk products through commercial channels. At any time such operations engage in competition with regulated handlers by disposing of fluid milk products in commercial channels, he said, they should lose their exempt status and become regulated.

The "exempt plant" definition, as proposed and modified by proponent, should become part of the merged order. A milk handler disposing of less than 1,000 pounds of fluid milk per day is not likely to disrupt marketing conditions in a market which disposes of nearly two million pounds of milk per day. In addition, organizations such as the LDS and BYU milk plants are not in competition with the fully regulated handlers who compete for route sales in the market. The "exempt plant" definition should be constructed in such a way that if such entities were to enter commercial distribution channels their exemption from regulation would cease.

A "partially regulated distributing plant" would also be considered to be a nonpool plant. A partially regulated distributing plant would be a distributing plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant. Such a plant would be one from which during the month an average of 1,000 pounds or more of fluid milk products is disposed of daily as route disposition in the marketing area, but is not operated by a government agency, a college or university, or a charitable institution from which route disposition is for charitable purposes and without remuneration. Also, such a plant would distribute less than 15 percent of its receipts as route disposition within the defined marketing area of the order and/or not meet the minimum total route disposition requirement of the order.

An "unregulated supply plant" means a supply plant that does not qualify as a pool supply plant, an other order plant, a producer-handler plant, or an exempt distributing plant. In essence, it is a plant that transfers milk to a pool distributing plant, but not to an extent that would qualify it for pool status under the order.

Handler. The impact of regulation under an order is primarily on handlers. The handler definition identifies persons who will have responsibility for filing reports and/or making payments for milk under the merged order. As herein provided, the following persons are defined as handlers under the order:

(1) The operator of one or more pool plants;

(2) A cooperative association with respect to the milk of producers that it causes to be picked up at the farms and delivered to a pool plant or diverted for the cooperative's account to a nonpool plant;

(3) A producer-handler;

(4) The operator of an other order plant from which milk is disposed of in the marketing area;

(5) The operator of an exempt plant;

(6) The operator of a partially regulated distributing plant; and

(7) The operator of an unregulated supply plant.

All such persons are now defined as handlers under the Lake Mead order, and most are so defined under the present Great Basin order. Each person that may incur an obligation (reporting and/or financial) under the order should be designated a handler. This will assure that all information necessary to determine their regulatory status under the order can be readily determined by the market administrator.

Proponent witness testified that the proposed definition is essentially the same as those contained in the separate orders and is intended to serve the same purpose. Specifically, the definition is nearly identical to the one contained in the present Lake Mead order. Adoption of the proposed handler definition should help to assure orderly marketing in the merged marketing area.

Producer-handler. The merged order should continue the exemption now contained in each of the two individual orders of a "producer-handler" from the pooling and pricing provisions of the order. Under the merged order, the definition of a producer-handler should be essentially the same as that now contained in the Great Basin order. The amount of fluid milk products a producer-handler would be able to purchase from pool or other order plants and still maintain its exemption from regulation would be increased somewhat from 3,000 pounds to 5,000 pounds per month, or 5 percent of the producer-handler's Class I sales, whichever is greater.

Proponent witness testified that a farmer who is engaged in distributing its own milk production should be exempt from regulation as long as the operation of the farm or dairy plant does not involve other milk-producing or processing entities. The witness explained, however, that as long as a producer-handler does not share its Class I disposition with the other producers in the pool, the producer-handler should not be able to share in the Class I proceeds of other producers. He said that there may be times when a producer-handler cannot produce all of its Class I needs, and may have to purchase Class I milk from the pool, sharing some of its Class I use with other producers. At other times, the witness observed, a producer-handler may need to dispose of surplus milk as a Class III sale to a pool outlet, an action which would not affect other producers.

Although the actual order language proposed by proponent would reduce the limit on the amount of milk a producer-handler would be allowed to purchase from pool sources, proponent stated that the limit on the amount of milk a producer-handler may purchase from pool sources should be increased because of the growth in size of producers in recent years, and an assumption that producer-handlers have also grown in size. According to the witness, the regulatory status of handlers currently involved in either order would not change as a result of the proposed changes in the present producer-handler definitions of the Lake Mead and Great Basin orders. There was no other testimony at the hearing relating to the limits to be placed on a producer-handler's operations.

A primary basis for exempting a producer-handler from the pricing and pooling provisions of the order is that such a person customarily has a relatively small operation and is operating in a self-sufficient manner. The milk that is processed, packaged and distributed by a producer-handler is obtained from its own production. Any fluctuations in a producer-handler's daily and seasonal milk needs is met through his own farm production, and any excess milk supplies are disposed of at its own expense. Under this arrangement, a producer-handler seldom can be a major competitive factor in the market for regulated handlers, nor can such a person have a preferred market for its milk relative to producers who supply the regulated handlers and share in the proceeds of the marketwide pool.

If a producer-handler processes milk from its own farm but also relies on pool plants for substantial supplies, either in bulk or packaged form, its operations are not significantly different than the operations conducted by a pool handler. However, since its operation is not fully regulated, the pool does not receive the benefits of the producer-handler's Class I sales. And yet, the other producers in the market are bearing the cost of balancing its operation by carrying such operator's necessary reserve milk supplies. Such an operator should not have producer-handler status under the merged order, but should be accorded pool status similar to that of any other handler who receives significant amounts of milk from pooled sources.

In view of the marketing situation in the merged order, the proposed producer-handler definition should serve to identify and exempt from regulation those entities who rely almost entirely on their own milk production to balance their fluid sales. At the same time, producer-handlers who rely too heavily on pool resources to balance their fluid milk needs would become fully regulated handlers, sharing their Class I use with the other producers in the market. According to the market statistics introduced by the market administrator, producer-handler dispositions appear to represent a relatively small part of Class I sales in the Great Basin market and little or none of the Class I sales in the Lake Mead marketing area. The limits proposed to be placed on producer-handler purchases should be adequate to prevent such persons from creating disorderly marketing conditions in the merged marketing area, and should be adopted.

Proponent filed an exception to the recommended decision objecting to the limits established on producer-handler purchases from pool sources. Proponent cited the unusually large size of producers located in the Lake Mead area and nearby regions of California as the reason producer-handler purchases should be limited to the lesser of 5,000 pounds or 5 percent of the producer-handler's Class I sales rather than the greater of such limits. According to proponent, the pool distributing plants in southern Nevada are not so large that they could not be fully supplied by any one of a number of producers in the area. Proponent asserted that the ability of a very large producer-handler to rely on pool reserves to supplement the quantities of milk represented by one of the southern Nevada pool plants without losing its exemption from regulation could disrupt orderly marketing in that portion of the marketing area.

Although proponent's speculation about possible developments in the Nevada portion of the merged marketing area may be accurate, order provisions are more appropriately established on the basis of current marketing conditions. At the time of the hearing, there were twelve producer-handlers operating in the Great Basin marketing area and none in the Lake Mead area. Under the present terms of the Great Basin order, a producer-handler may purchase the greater of 3,000 pounds or 5 percent of its Class I sales from pool sources. Adoption of a lower limit on purchases from pool sources of the lesser of 5,000 pounds or 5 percent of the producer-handler's Class I sales could have the effect of regulating some producer-handlers that currently are exempt from pooling. There is no basis in the record to make it more difficult for producer-handlers to avoid full regulation. Accordingly, producer-handlers should be able to purchase the greater of 5,000 pounds or 5 percent of their Class I sales from pool sources.

One change to be made in the producer-handler definition as proposed is that producer-handlers should be able to receive Class I milk from pool sources by diversion directly from producers' farms as well as by transfer from pool plants. At times, it may be more efficient for a pool handler to deliver supplemental milk supplies directly from a farm pick-up route than to pump milk out of a pool plant into a tank truck for delivery to the producer-handler. Also, allowing such milk to be moved by diversion as well as by transfer will help to forestall incidents in which a producer-handler operating within the order's limits inadvertently receives a partial load of diverted milk rather than transferred milk and must be pooled as a result. The effect on the pool of allowing a producer-handler to receive Class I milk by diversion would be the same as if such milk were received by transfer, except that the handler selling the milk may be able to handle the milk more efficiently.

Producer. The producer definition proposed for the merged order and adopted in this decision is essentially the same as those in the present Lake Mead and Great Basin orders. However, the provision of the producer definition in the Lake Mead order commonly referred to as the "dairy farmer for other markets" provision has been modified by proponent to avoid unnecessarily restricting the pooling of milk under the order. The present Great Basin order contains no such description of a nonproducer, and proponents expressed concern that adoption of the present Lake Mead provision would make it difficult to manage the milk supplies marketed in the regulated areas of Idaho and Wyoming, and in northern Utah.

Proponent witness described the present Lake Mead provision as requiring that all of a producer's milk production for a month be pooled under some Federal order if any of the producer's milk is to be eligible for pooling, beginning with the first day of the month. He explained that the modification would allow a producer's milk to be pooled if the producer became associated with the market sometime after the first day of the month, but would still require that all of the producer's production for the remainder of the month be pooled. Proponent supported the change in the provision by observing that the Grade B producers who convert to Grade A and wish to share in the pool should not have to wait until the first day of the month following their change in status to do so. In addition, he stated that IMPA sometimes balances fluid milk needs and handles reserve supplies in cooperation with handlers in other nearby marketing areas, and that the modification would assist the cooperative in the efficient management of such milk supplies without allowing producers' pool status to change on a daily basis.

The "dairy farmer for other markets" exclusion from the producer definition would prevent dairy farmers whose milk is regularly used for fluid disposition in other markets from pooling the surplus part of their production on the merged order and sharing the Class I value of the merged Great Basin pool with those producers who regularly supply the fluid needs of the merged order. Modification of the "dairy farmer for other markets" provision would prevent it from becoming too restrictive to enable handlers to market milk in the most efficient manner possible.

Producer milk. The order must define clearly which milk is eligible to be included in the marketwide pool and share in the market's fluid milk sales. For this reason, certain minimum standards of association with the market are determined for individual producers and for all of a handler's producers as a group. The merged order should require that all producers "touch base" by delivering at least one day's production of milk to a pool plant each month. Diversion limits on the amount of milk not needed at fluid processing plants that may be delivered directly from producers' farms to nonpool manufacturing plants should be established at 60 percent for the months of April through August and 50 percent in other months of the total milk delivered to pool plants and diverted to nonpool plants by a handler.

Proponent proposed, and argued at the hearing and in a brief, that an appropriate level of allowable diversions would be much lower than the limits adopted in this decision. Proponent based its argument that diversions should be limited to 25 percent in the months of April through August and 15 percent in other months of the producer milk delivered to pool plants by a handler on the expected existence in the merged order of the cooperative-operated pool manufacturing plant definition adopted in this decision. Because the cooperative would be able to count deliveries to its own manufacturing plants as deliveries to pool plants, proponent witness stated, the cooperative's need to divert milk to nonpool plants would be reduced substantially. In the post-hearing brief filed on behalf of IMPA, proponent argued that its proposed diversion limits are nearly the same as those in the present Great Basin order and should be adopted to serve the same purpose currently served by those limits. In addition, proponent argued that the 15-percent limit proposed for the months of September through March should be reduced from the current Great Basin order's 20-percent limit for the purpose of encouraging manufacturing plants to release milk to distributing plants during the season of the year when milk is more likely to be needed for fluid use.

Kraft, Inc., proposed that a handler be allowed to divert a quantity of milk equal to the volume delivered to pool plants during the months of April through August, and 50 percent of the volume of milk delivered to pool plants during other months. In effect, a handler would be able to divert 50 percent of its total milk supply to nonpool plants in the months of April through August, and 33 percent in other months. In the post-hearing brief submitted on behalf of Kraft, the diversion limits proposed to be incorporated in the merged order were relaxed to 50 percent of a handler's milk supply on a year-round basis to better accommodate the present needs of pool handlers.

In testimony presented at the hearing, the witness representing Kraft described the production and marketing conditions in the present Great Basin marketing area as unable to support the highly restrictive diversion limits proposed by IMPA. We cited percentages of Class I use in the Great Basin market for the months of April through December 1985 that ranged from a low of 41.6 percent in June 1985 to a high of 53.6 percent in November 1985. The witness then pointed out that the diversion limit percentages proposed by IMPA, at 25 and 15 percent of milk delivered to pool plants, would actually represent only 20 and 13 percent, respectively, of the total volume of milk handled by a diverting handler. The Kraft witness acknowledged that IMPA would be able to pool all of its member milk within IMPA's proposed diversion limits if a cooperative manufacturing plant is to be considered a pool plant. He asserted, however, that other handlers would continue to require realistic diversion limits to promote efficient handling because of their inability to designate their manufacturing outlets as pool plants. The Kraft witness observed that the diversion limits in both the Great Basin and Lake Mead orders have been suspended much of the time for the last several years because IMPA has been unable to operate within the present limits of the two orders.

Witnesses representing KDK Dairy, Inc., and Gossner Foods, Inc., two proprietary handlers pooled under the Great Basin order, testified that the diversion limits proposed by IMPA for the merged order would be entirely too restrictive to enable either of those two handlers to maintain the pool status of all of the producers whose milk they currently handle. The witness for KDK testified that KDK receives all of its milk supply from its own nonmember producers, and balances its supply by sending surplus milk to Gossner Foods' cheese plant in Logan, Utah. She stated that KDK is located about 20 miles south of Salt Lake City and about 100 miles south of the Cache Valley area where most of KDK's producers are located. The witness said that when producers' milk is not needed for fluid use at KDK, it can be diverted to the Gossner cheese plant at Logan, Utah, near the producers' location. She described such milk movements as being more efficient and less costly to producers than shipping the milk to the KDK plant, unloading it, reloading it and shipping it back to Gossner Cheese. Such unnecessary and expensive milk shipments would be required, the witness said, in order to pool KDK's producer milk supply if the restrictive diversion limits proposed by IMPA were adopted.

The KDK witness stated that with the recent loss of a major account, KDK has found it necessary to divert about 50 percent of its producer milk supply to manufacturing use. She explained that it is important to KDK to have a large enough supply of milk available in order to expand sales if the opportunity to do so should arise. She also indicated that it is as important for KDK to be able to pool all of its producer milk supply as it is for IMPA to be able to maintain the pool status of all of its member producers. The brief filed by KDK argued further that KDK and Gossner both balance their own supplies of milk and share the same problems of operating within the current order provisions as IMPA does. The brief states that IMPA would be able to operate within its own proposed diversion limits only if the IMPA manufacturing plants are considered pool plants, and that imposing the proposed limits only on proprietary handlers would be inequitable. The KDK brief, while stating a preference for unlimited diversions, supported the Kraft proposal to establish diversion limits at 50 percent during the months of April through August and 33 percent in other months of a handler's total supply of producer milk, in preference to the limits proposed by IMPA.

A representative of Gossner Foods testified that diversion limits should be established at a level that would allow a handler to divert 50 percent of its milk supply on a year-round basis. The witness described Gossner's fluid milk business as an aseptic packaging and processing pool plant. In addition, he said, Gossner operates a cheese factory through which it balances the milk supply for its fluid milk plant. The witness said that Gossner's aseptic fluid milk sales are primarily to the military, and explained that Gossner needs reserve supplies of milk large enough to enable the handler to bid on contracts which, if accepted, might double Gossner's output and result in a need for more producer milk receipts. Further, in a brief filed by Gossner, the handler stated that the reserve supply of milk which must be available to fill contracts must be of a dependably high quality that will enable the milk to withstand the high sterilizing temperatures required for aseptically packaged fluid milk products. The handler stated that it is important for Gossner to receive milk from its own group of producers in order to work with the producers to ensure that high quality milk receipts are available to fill contracts.

The post-hearing brief filed by Gossner advocated that the order contain no limits on the volume of producer milk that may be diverted to nonpool plants if, as a result of adopting the cooperative pool manufacturing plant definition, IMPA would be subject to no such limit on diversions. In the brief the handler described diversion limits affecting proprietary handler operations under such circumstances as discriminatory. Gossner stated that all producers associated with the present Great Basin order should have their total production pooled and priced, asserting that the IMPA witness' testimony to the effect that the federation cannot pool the milk of some cooperative members and fail to pool others' is applicable to nonmembers as well. In fact, the handler observed, a cooperative's ability to reblend monies received from the marketwide pool among its members makes pool status much less important to individual cooperative members than to nonmembers. In lieu of continuing the present situation, in which diversion limits are suspended, Gossner advocated adoption of a limit on diversions of 50 percent of a handler's total producer milk supply.

It is true that adoption of the cooperative pool manufacturing plant definition would, for all practical purposes, exempt IMPA from the effects of the order's diversion limits by changing the status of the federation's manufacturing plants from nonpool plants to pool plants. However, the provision of the cooperative pool manufacturing plant definition that requires that a cooperative association deliver at least 45 percent of the total supply of its member producer milk to pool distributing plants would, in effect, require the same standard of performance of IMPA as the diversion limits require of other handlers in the market.

It is obvious from the testimony of the witnesses representing KDK Dairy and Gossner Foods, as well as from the market statistics, that the diversion limit percentages proposed by IMPA are much too restrictive to allow other handlers to operate their milk plants or to handle their producer milk supplies efficiently or economically. The percentage of producer milk used in Classes II and III has been increasing in recent months and, as producer milk increases continue, the rate of increase of milk surplus to the fluid needs of the market shows no sign of abating. The diversion limits of both of the present orders have been found too restrictive for some time now, a fact reflected by the suspension of those limits for much of the last several years. Establishing diversion limits even more restrictive than those in the present Great Basin order would ensure that the milk of some producers in the market would fail to be pooled, or that the limits would have to be suspended as soon as the merged order is effective.

The diversion limits adopted in this decision are only somewhat more liberal than those contained in the present Lake Mead order. Relaxation of the present Lake Mead diversion limits for the merged order is necessary because of the historically greater use of milk in Class II and III in the Great Basin marketing area than under the Lake Mead order, and the predominantly greater share of the milk to be pooled under the merged order represented by present Great Basin production.

While it is true that allowing IMPA to pool its manufacturing plants will solve the over-diversion problems experienced by the cooperatives, the existence of pool manufacturing plants should not be a basis for narrowly limiting the amount of milk that may be diverted to nonpool plants by other handlers. Unnecessarily restrictive diversion limits would continue to encourage inefficient handling of producer milk by handlers that use nonpool manufacturing plant outlets to dispose of their surplus milk. The same data that supports a requirement that a cooperative association deliver only 45 percent of its member producer milk to pool distributing plants in order to pool its manufacturing plants also supports diversion limits that would allow other handlers to qualify all of their producer milk supply for pooling on the basis of delivering approximately the same percentage of their milk to pool distributing plants as cooperatives are required to deliver.

Gossner Foods, Inc., submitted an exception to the recommended decision that advocated the deletion of all diversion limits and "touch-base" requirements from the merged order. Gossner contends that any dairy farmer producing Grade A milk should be entitled to share in the marketwide pool, and that handlers should not have to determine which producers may participate when the entire quantity of each producer's production is available and meets the requirements for fluid use. Although the Great Basin order's diversion limits have been suspended since January 1985, and its "touch-base" requirements have been suspended since July 1985, there is no record evidence that indicates that the continued absence of such provisions would be beneficial to the marketing area. There is no way of assuring which producer milk is available and qualified for fluid use unless it is delivered, at least occasionally, to a fluid milk processing plant. Furthermore, all producers who share in the benefits of marketwide pooling should bear some responsibility for assuring an adequate supply of milk for the market's fluid needs.

Exceptions to the recommended decision filed by proponents included an explanation of proponents' assertion that cooperative associations, because of their role of carrying and marketing reserve supplies for other handlers in the market, are entitled to wider latitude under the order in the application of provisions pertaining to the amount of milk such associations are able to pool. According to proponent, handlers that have only fluid milk operations may not need any diversion privileges at all but can rely on the cooperative for any needed reserve milk supplies. Proponent states that giving fluid milk handlers the same diversion limits that cooperatives operate within, in effect, gives cooperative associations much less flexibility in pooling their member milk than proprietary handlers have in pooling the milk of their nonmember producers. However, the hearing record shows clearly that in the Great Basin market there are at least two proprietary handlers that do not rely on reserve supplies of milk obtained from cooperative associations, but carry their own reserve supplies. Limiting the percentage of diversions that these handlers would be allowed under the order to the very low level advocated by proponents would have the effect of requiring these handlers to obtain their reserve milk supplies from proponents. Such a provision, especially in a market in which the principal cooperative association is one of the primary competitors for fluid milk distribution, would create an unwarranted anticompetitive marketing situation.

Federal milk orders customarily do not contain differing diversion allowances for cooperative associations and proprietary handlers. There is no basis in the record of this proceeding to provide for more liberal diversion limits for cooperative associations than for proprietary handlers. To the extent that proponent does carry some responsibility for balancing the fluid milk needs of the market, the provision allowing a cooperative association-owned manufacturing plant located within the marketing area to be considered a pool plant is intended to assist proponent in maintaining the pool status of the milk of its members.

Diversion limits for the months of September through March should be 50 percent of the total milk supply of a handler. For the months of April through August, the limit on the proportion of a handler's milk supply that may be diverted to nonpool plants should increase to 60 percent. Because milk production and consumption vary seasonally, there should be some recognition of the fact that more milk will have to be diverted to manufacturing uses during some periods of the year than during others. As proposed by IMPA, diversion limits should allow more milk to be delivered directly to nonpool plants during the months of April through August than during September through March. Statistics for the Great Basin and Lake Mead marketing areas for 1984 and 1985 indicate that the percentage of milk used in Class II and Class III is higher during the months of April through September than in other months. As a consequence, higher percentages of milk must be diverted during those spring and summer months than during the fall and winter. September, however, is the traditional month for schools to resume classes and therefore, for Class I consumption in schools to increase. Consequently, September should not be included with the months during which diversion limits would be increased.

In Kraft's brief it was suggested that if in the event of over-diversions the handler fails to designate which milk is to be excluded from the pool, the market administrator should first exclude the last milk diverted during the month in lots of an entire day's production until the diversion limit is reached. There is no testimony in the record to support such a procedure, which could be a sizable administrative burden for the market administrator. As proposed by IMPA, the merged order directs that if the diverting handler fails to designate which producers' milk is not to be producer milk, none of the handler's diverted milk shall be producer milk. Such a provision should ensure that an over-diverting handler will not neglect to designate which producer milk should not be pooled.

An additional modification to the producer milk definition suggested by a Kraft representative at the hearing and included in Kraft's post-hearing brief should be adopted. Provision should be made in the merged order for the Director of the Dairy Division to adjust diversion limits up or down by 10 percentage points. Such a provision will provide additional flexibility in providing for efficient disposal of surplus milk or assuring adequate supplies of milk for fluid uses at a time when production tends and marketing conditions are changing and uncertain. No parties present at the hearing objected to the inclusion of such a provision in the merged order.

Federation. A definition of the term "federation" should be included in the merged order, as originally proposed by IMPA. A federation should be defined in the order as a business organization incorporated under state law that is owned and operated by two or more cooperative associations. Most of the references to cooperative associations in the order will also refer to federations. At the hearing, IMPA's witness testified that such a definition would not be necessary because the four individual cooperative associations of which Intermountain Milk Producers Association is composed were planning to merge their organizations into one cooperative association by the time the merger proceeding would be completed. However, all of the descriptions of marketing conditions in the merged marketing area included references to IMPA as a federation and were based on the organizational status of the cooperatives that then existed. Until there is evidence that the federation has ceased to exist, the definition should be included in the order.

5. *Multiple component pricing.* IMPA included in its proposed merged order a plan to price milk according to its content of protein and butterfat, as well as the differential values of milk used in Class I and Class II. The proposed pricing plan, with some modifications, should be adopted. Under the component pricing plan adopted herein, handlers' obligations for producer milk used in Class I will not be affected by the protein content of the milk.

At the present time under the Lake Mead and Great Basin orders, and under nearly all of the other Federal milk orders, milk received by handlers is priced according to the pounds of producer milk allocated to each class of use multiplied by the prices per hundredweight of milk testing 3.5 percent butterfat, as determined under the orders for each class of use. Adjustments for such items as overage, reclassified inventory, location and other source milk allocated to Class I are added to or subtracted from the classified use value of the milk. The resulting amount is divided by the total producer milk in the pool to calculate a price per hundredweight of milk testing 3.5 percent butterfat to be paid to producers for the approved milk they have delivered to handlers. The price paid to each producer is then adjusted according to the specific butterfat test of the producer's milk by means of a butterfat differential. The butterfat differential is computed by multiplying the wholesale selling price of Grade A (92-score) bulk butter per pound at Chicago, as reported for the month by the U.S. Department of Agriculture, by .115.

The IMPA witness advocated adoption of the proposal to price protein contained in producer milk on the basis that higher levels of protein in milk improve the yield of manufactured products in which the milk is used, and thereby increase returns to the handler using such milk. Therefore, the witness stated, milk containing a higher level of protein has a greater value, and should be priced accordingly. He testified that nearly all of the milk surplus to the fluid needs of the Lake Mead and Great Basin marketing areas is processed into cheese at nonpool plants located in and around the marketing areas. He described cheese as a product whose yield is largely a function of the protein content of the milk from which it is made, and stated that all of the cheese plants he had surveyed in or near the marketing area pay producers on the basis of the protein content of their milk, or on the basis of formulas which attribute cheese yield to the nonfat, or protein, and butterfat solids in producer milk.

The witness argued that the value of butterfat in milk has been reflected in payments for milk for decades, and that protein should not be treated any differently. In fact, he asserted, demand conditions for milk and dairy products have changed considerably over the years, and as a result the value of protein in milk has become more important than the value of butterfat. The witness cited the changing relationship between the prices of cheese and butter as an example of the shift in relative values of the two components. Prices cited for 1920 through 1980 indicate that cheese has risen in price relative to butter from less than half of the value of butter in 1920 to more than the value of butter in 1980. The witness stated, however, that up to the present time protein contained in producer milk has been priced at the same level as the water in which it is contained, while it clearly is of much greater value than water. He stated that under the present order provisions a producer is paid the same price for milk that will produce 11 pounds of cheese as for milk that will produce 9 pounds of cheese. The witness argued that producers should be given an incentive to increase their production of protein relative to water in milk by being paid for protein at a level that reflects its value in manufactured products.

Proponent witness testified that the ability of unregulated handlers to pay producers according to the protein content of their milk gives them an unfair advantage over pooled handlers, who must pay producers at least the order's minimum uniform price. Pooled handlers, therefore, are not allowed to pay producers less than the order's minimum price for milk of low protein content, although they are allowed to pay a premium for milk of high protein content. According to the witness, nonpool handlers consequently enjoy an advantage in procuring higher-protein milk supplies, and pooled handlers are left with milk of a lower protein test. The IMPA witness asserted that the declared policy of the Agricultural Marketing Agreement Act of 1937 would be effectuated by adoption of the use of protein in the pricing of milk under Federal milk orders because of the Act's requirement that prices to handlers be uniform. The witness argued that payment of the same price for milk which will yield different amounts of the same product is inequitable pricing.

According to the proponent witness many milk handlers, including proponent who represents a substantial majority of the producers in the proposed merged marketing area, currently pay producers at least partially on the basis of protein and have encountered no difficulty in so doing. An expert witness in the field of dairy chemistry testified that protein testing is indeed feasible and widely practiced in the dairy industry. He stated that although testing milk for any component, including butterfat, is not an exact science, the currently accepted methods of testing for the protein content of producer milk can be used to provide fair and equitable results on which payments for producer milk may be made. The expert witness testified that the accepted methods of testing producer milk for protein vary greatly in the cost of equipment and expertise required to perform the testing. He stated that one of the tests available is a better determinant of protein in milk than the Babcock test (the primary test for butterfat) is of butterfat, and that a lab technician's ability to obtain the same results with repeated testing is at least as good with one of the secondary protein tests as with the Babcock test. The expert witness described milk protein as distributed uniformly throughout the skim portion of milk. He stated that because of this characteristic of protein it is much easier to obtain a representative sample of milk for protein testing than for butterfat testing.

The IMPA witness testified in favor of using the price per pound of protein and butterfat to determine the value of those components in producer milk, rather than adjusting a uniform price to producers by the differential value of each component as is done currently in the case of butterfat. In addition, under the proposal producers would receive their share of the added value in the market's Class I and Class II utilization by means of a "weighted average differential" price.

Proponent recognized the difficulty of pricing protein used in Class I products, citing the widely-held belief in the fluid milk industry that consumers are not willing to pay for extra protein in fluid milk at a rate that would equal its value in other uses. Therefore, proponent proposed a negative adjustment to be made to the pool obligation of a handler whose average of protein in producer milk is higher than in the market as a whole, and who tests all of his receipts and milk used in his plant for protein.

In his testimony, proponent witness stressed the importance of complete testing and accounting for both butterfat and protein in all receipts and finished products. However, testimony in the record indicated that reliable tests of protein content are not available for some manufactured products, and that such a requirement would necessitate substantial additional expenditures for testing and accounting on the part of regulated handlers. Accordingly, the testing and accounting requirements were revised in proponent's brief to require that all fluid milk and cream products and fluid milk, cream and nonfluid receipts used in manufactured products be tested for butterfat and protein content and accounted for accordingly.

Other witnesses, who have dealt with protein pricing systems in other areas of the country, testified in favor of recognizing the value to handlers of protein in producer milk by adjusting payments to producers according to the protein content of their milk. The manager of a Wisconsin-based cooperative association with wide experience over a five-year period in marketing milk priced solely on the basis of protein and butterfat stated that protein pricing benefits handlers, producers and consumers. The witness testified that consumer demand has changed the relative values of skim milk and butterfat over time, shifting value from butterfat to skim milk and to the products such as cheese whose yield is affected by the protein content of skim milk. He said that handlers prefer a system which recognizes the effect of the composition of their producer milk receipts on the amount of finished product they are able to obtain from it. In addition, he testified, producers receive a signal to respond to price incentives by selecting cows on the basis of total protein and fat production.

The witness asserted that the operating efficiency of the entire dairy industry will be improved if milk is priced on the basis of the value of its protein or nonfat components, as well as its butterfat content. He predicted a reduction in the volume of milk produced combined with an increased percentage of protein and butterfat in the milk, with the result of enabling processing plants to operate more efficiently. As milk production and processing become more efficient, and therefore more profitable for producers and processors, he stated, consumers may benefit from the increased efficiency of the industry. The Wisconsin cooperative manager testified that accepted testing procedures for protein yield more consistent and repeatable results than the commonly-used butterfat tests. He indicated that his association has had no difficulty in testing, accounting or paying for milk on the basis of protein as well as butterfat.

A representative of an Iowa-based Midwest cooperative association testified that his association has been paying bonuses for protein in its members' milk since 1973. He stated that cooperative members are paid a bonus for protein tests above a 3.2 percent base, and that a deduction is made for milk testing below 2.9 percent protein. According to the witness, members perceive protein payment as equitable, and cooperative management favors the incentive created by such payments for the production of milk high in solids and high in cheese yield. The witness stated that Grade B producers are paid a higher rate for high protein content than is paid to Grade A producers because the milk of the Grade B producers is used in manufactured products where higher protein content results in increased yield, while Grade A milk is used in fluid milk where no gain is realized for higher protein content.

A witness associated with the California dairy industry testified that multiple component pricing has been used under the California State order for approximately 20 years, and that he favors it wholeheartedly. He stated that an adequate testing system, while expensive, is accurate and completely satisfactory. However, the California witness asserted that full accounting for protein as well as butterfat in all receipts and uses in a milk plant would be a nightmare for handlers. He stated that both protein and nonfat solids in milk can be tracked with the skim milk from which they cannot easily be separated and within which they are uniformly distributed. He also expressed the opinion that protein should be priced in all products, not just manufactured items, and that minimum standards of protein content should be established and enforced for all packaged milk.

A representative of the cheese-making industry testified that there is no doubt that protein has value in milk used to make cheese because of the direct relationship between the protein content of the milk and the amount of cheese that may be made from that milk. He also stated that the cheese-making organizations he heads believe that Federal orders must be modified to recognize the values of protein in milk. However, he expressed concern that the proposed pricing plan would apply the same price to protein in all uses when its value in different dairy products varies somewhat. He also expressed misgivings about the use of the skim milk value of the Minnesota-Wisconsin price and the market-wide average of protein to establish a value for protein. He explained that the protein content of milk produced in Minnesota and Wisconsin that is used in the computation of the "M-W" price, which is used as a price determinant under all milk orders, is greater than the protein content of milk produced in Utah and Nevada. He expressed the belief that as a result of the difference in protein content between the two areas, the proposed procedure for determining a value for protein may result in overvaluing that component in the merged Great Basin area.

The witness suggested that the order allow handlers to make deductions from producer payments for milk low in protein, in the same way that handlers currently pay premiums for higher-than-average levels of protein in producer milk. Such a solution, he suggested, would allow handlers to pay producers on the basis of the protein content in their milk, but would avoid incorporating a system of protein pricing within the order.

One reservation about the proposed pricing plan voiced by most of the witnesses who supported the adoption of some form of multiple component pricing is its inability to address the problem posed by the presence of somatic cells in milk. According to testimony in the hearing record, somatic cells occur naturally in milk. However, in the presence of infections such as mastitis, somatic cell numbers multiply greatly and produce enzymes that break down the casein component of milk protein that contributes to cheese yields. These witnesses urged that any protein pricing system, to be effective, should incorporate some type of quality payment schedule based on the somatic cell count of a producer's milk.

The notice of hearing in this proceeding included no reference to the consideration of any payment adjustments for somatic cell counts. The question of somatic cell counts and their effect, as well as other quality considerations constitute separate issues which should more appropriately be addressed at another proceeding with proper notice and opportunity for both opponents and proponents to prepare testimony.

In exceptions filed to the recommended decision, Kraft, Inc., stated that failure to account for the presence of somatic cells in producer milk is a serious defect in the proposed protein pricing plan because of the detrimental effect a high number of such cells has on cheese yields, even in high-protein milk. The handler requested that the hearing be reopened, at least for further briefing and receipt of evidence, for the purpose of including somatic cell adjustments. Kraft argued that the issue of protein pricing clearly includes the subsidiary issue of the effect of somatic cell presence on protein value, as many witnesses testified at the hearing. Exceptions filed by the Holstein-Freisian Association of America to the inclusion of protein pricing in the order included the comment that tests for protein in producer milk are flawed by their inability to adjust for the presence of somatic cells.

As previously stated, although there was much discussion of the effect of somatic cells on the value of protein in producer milk, the possibility of making any payment adjustments for somatic cell counts was not adequately noticed. As a consequence, unacceptable levels of somatic cell counts and appropriate value adjustments for differing levels of somatic cells cannot be formulated on the basis of the record in this proceeding. In addition, the need for such adjustments in the context of the protein pricing scheme contained herein was not adequately established. This record adequately supports the protein payment plan contained in this rulemaking. Therefore, Kraft's request for a reopened hearing is denied. There is no reason for further delay in the present proceeding. Any adjustments in protein price for somatic cells or other quality factors which may be considered necessary in the future may be the subject of another hearing if the pricing system presented here proves to be in need of such adjustments.

Opposition to the multiple component pricing proposal came from several fluid milk handlers regulated under the Great Basin order, and from a national trade association for dairy product processors. The witness for the trade association expressed concern that a lack of readily available and efficient methods of testing for protein may lead to non-uniform or unequal raw product costs for handlers. He also was opposed to including any Class I products and some Class II products in a component pricing scheme because the value of such products is not affected by their protein content. Additionally, the witness stated that there is no readily available method for handlers to extract protein or nonfat solids from the milk they receive, and therefore no advantage to a Class I or Class II processor in receiving high protein milk.

Another feature of the proposed payment plan opposed by the trade association representative was the requirement that a handler report and account for the protein contained in all incoming milk and finished products. The witness expressed a preference for a "used-to-produce" concept, under which all of the milk going into a product must be tested and all of its components accounted for, but which would not require the finished product itself to be tested. He described the available tests for protein as dangerous and expensive to perform, requiring specialized personnel and equipment. In addition, he stated that the officially recognized protein tests are not appropriate for determining the protein content of all dairy products. The witness suggested that the percentage of protein contained in a handler's milk receipts may be assumed to remain constant regardless of the product in which it is used. He stressed the importance of an efficient, practical, uniform and reliable testing program to assure equity between handlers and producers, and expressed doubt that present testing technologies are adequate to fulfill such conditions.

A further concern voiced by the trade association representative was that the price alignment of milk used in the same products in different marketing areas be maintained. He expressed scepticism that competition among handlers in adjoining markets can remain fair if a handler in one market who must pay for his milk on the basis of its protein content competes for sales with a handler in another market who does not pay for milk based on its protein content.

An expert witness testifying on behalf of the trade association expressed concern that the testing procedures necessary to implement a protein pricing system are too expensive for most fluid milk handlers to justify on the basis of the benefits to be enjoyed from such testing, both in terms of capital costs and in terms of salaries that would have to be paid to technicians more highly trained than a milk plant would otherwise need to employ. In addition, he testified, handlers' accounting and recordkeeping costs would increase as a result of such a pricing plan, as would the probability of extra costs associated with overages and excess shrinkage resulting from testing inaccuracies. The witness also observed that the protein content of nonfat solids varies significantly. Therefore, he stated, a plant that does not make cheese does not have any use for protein testing in controlling the solids content of its Class I and Class II finished products, even to determine whether its products meet the minimum identity standard for nonfat solids content.

Three fluid milk handlers currently pooled under the Great Basin order who opposed the proposed multiple component pricing plan also objected to the extra costs of testing and accounting for the protein, as well as the butterfat, in all of their receipts and finished products. The handlers found it especially unfair that they be expected to assume such an added cost burden in order to account for a component that does not enhance the value of the products they process and sell. Another feature of the proposal to which they objected was the deduction to be made from handlers' obligations in the case of handlers whose Class I milk contains a higher protein percentage than the marketwide average. Such a provision, they contended, would result in inequitable pricing for Class I use between handlers, with handlers receiving lower-protein milk paying less for it than handlers receiving milk containing the marketwide average percentage of protein or more. In such a case, the low-protein milk would be worth as much used in fluid milk products as milk containing more protein, although the costs to handlers would differ. The handlers complained that such a provision would fail to carry out the requirement of the Agricultural Marketing Agreement Act of 1937 that Federal milk orders establish uniform prices between handlers.

The protein content of milk received and used by handlers should be considered, along with butterfat and volume, as a factor in determining the value of producer milk under the order. Failure to include the effect of protein variations on the use value of milk in a marketing area in which a substantial volume of unregulated milk is subject to multiple component pricing can be expected to cause, and apparently has caused, serious problems for regulated handlers competing for the procurement of producer milk with the operators of nonpool plants who have a supply of pooled milk. In addition, it is economically sound in such circumstances to recognize additional value in milk with a higher-than-average protein content by paying more for such milk.

There was no disagreement among hearing participants that, all things being equal, milk containing a higher percentage of protein will result in greater yields of most manufactured products than milk with a lower protein test. If a handler receives milk that will result in greater volumes of finished products such as cheese or cottage cheese than the same volume of milk testing lower in protein, the handler should be required to pay more for the higher-testing milk. At the same time, the dairy farmer producing milk that yields greater amounts of finished product deserves to be paid more for it than a dairy farmer producing the same volume of milk that results in less product yield. The reason producers have been paid partly on the basis of the butterfat content of their milk for decades is that butterfat is a component of milk which affects the amount of butter that can be manufactured from a given amount of milk. Butter has value, and therefore additional butterfat in milk increases the value of the milk. A handler is required to pay for the butterfat in the milk he receives, and it is not unreasonable that he be required to pay for the protein in his milk receipts if protein content is a factor in determining the value of milk as it is used.

Rockview Dairy, the nonmember producer supplying milk to Anderson Dairy, filed exceptions that included an objection to receiving payment on the basis of the protein content of its milk. According to Rockview, it is not appropriate to price Rockview's pooled production on the basis of its protein content because all of its pooled production is supplied to a fluid milk handler and all of its surplus milk is marketed outside the order.

Unless the protein content of Rockview's milk varies significantly from the marketwide average of protein in producer milk, payments to Rockview as a result of protein pricing should not vary markedly from present payment levels. All producers participating in the marketwide pool should be paid on the same basis. If producers whose milk is used only in fluid products are not paid on the basis of the protein in their milk, as other producers are, the logical result would be a decline in the protein content of fluid milk products as producers whose milk is higher in protein content shift from fluid outlets to those which enjoy an economic benefit from the protein content in producer milk.

An exception by the Holstein-Freisian Association of America to the use of multiple component pricing under a Federal order stated that the Department has rejected component pricing in the past, and that those decisions should be studied in the context of reevaluating the recommended decision. However, no prior hearing relating to the adoption of component pricing under a Federal order has ever been held. This decision, therefore, is not a departure from a long-established policy. The only basis on which this decision should be examined is the record of the current proceeding and its compliance with the provisions of the Agricultural Marketing Agreement Act of 1937.

Those testifying at the hearing agreed that cheese is the manufactured product whose yield is most affected by the protein content of the milk used to produce it. It is apparent that an overwhelming proportion of the producer milk pooled under the Great Basin and Lake Mead orders and surplus to the fluid needs of those markets is used to produce cheese. Exhibits in the record show that 85 percent of the Class II and Class III milk pooled on the Lake Mead and Great Basin markets was used to produce cheese in 1984, and 89 percent in 1985. Given the percentages of milk used in these classes in the two markets, 38.2 percent of the total producer milk pooled on the Lake Mead and Great Basin markets in 1984 was used in cheese and cottage cheese, and 49.6 percent in 1985. Therefore, it is appropriate in these areas to price milk on the basis of its protein content to the extent that protein content affects the value of the milk in the end use.

An exception to the recommended decision filed by the Holstein-Freisian Association of America stated that producers should be compensated for all of the fat and nonfat solids produced and delivered to handlers. The Association stated that the nutrients and minerals in whey have economic value and represent marketable products beyond the casein portion for cheese. Accordingly, the Association urged that total nonfat solids replace protein as a basis for payment of producers under the merged order.

It is recognized that nonfat non-protein solids in producer milk have value. However, because the overwhelmingly predominant use of surplus milk in the Great Basin market is in cheese, protein is the most appropriate component of producer milk on which to base payment for nonfat solids in this market. Because the price to be paid for protein represents the total value of the skim portion of the Minnesota-Wisconsin price, producers will receive the full value of the nonfat solids contained in their milk. That value will be distributed to producers on the basis of the protein tests of their milk.

While protein content was seen to be critical in establishing the value of milk used in cheese, there was no evidence that protein content has any effect on the value of fluid milk products at all. On the contrary, there appears to be general agreement that consumers are not willing to pay more for fluid milk with a higher-than-average protein content than they are for low-protein milk. Handlers cannot easily remove protein from fluid milk products to add it to products in which it would have value, and it is illegal for them to add water to milk to reduce its protein content. Therefore, handlers obtain no discernable difference in economic benefit from the various levels of protein contained in milk used in fluid milk products, and there is no justification for requiring them to pay for such milk according to its protein content.

Regardless of doubts voiced by those opposing adoption of a multiple component pricing plan under the order, there is no reason to believe that the problems involved in adopting such a plan are insurmountable. It is clear from testimony in the hearing record that pricing milk on the basis of its protein as well as its butterfat content is practiced in other areas of the U.S. and among most, if not all, of the cheese processors in the proposed merged marketing area, as well as by the group of cooperative organizations representing a substantial majority of the producers in this area. Although opponents of the proposed pricing plan expressed reservations about the accuracy and reliability of present methods of testing for protein, other testimony indicates that those testing methods are at least as adequate as butterfat testing for purposes of determining handler obligations and payments to producers.

There was some difference of opinion between witnesses about whether higher protein content results in greater yield of such Class II products as ice cream, dips and yogurt. Because the protein price is derived from the value of skim milk, the difference caused by valuing a relatively small amount of milk at the protein price rather than at the skim milk price can be expected to be negligible. Therefore, protein pricing should apply to all producer milk used in Class II and Class III. There is no point in creating special categories of Class II and Class III use for products that would not be subject to protein pricing when the protein pricing plan adopted in this decision would cause little change in most handlers' pool obligations. Additionally, those products represent a very small percentage of the total milk in the pool.

Kraft, Inc., a proprietary plant operator which is not a handler under either the Great Basin or Lake Mead order, and the Milk Industry Foundation, a trade association of proprietary plant operators, filed exceptions to the inclusion of Class II products in the component pricing provisions of the merged order. Kraft also requested that the Secretary reopen the hearing for further briefing or for the receipt of evidence supporting the segregation of Class II products that receive no economic benefit from higher protein content from inclusion in protein pricing. The exceptions incorrectly attributed the rationale for pricing producer milk used in Class II on the basis of its protein content solely to the fact that those products represent a small percentage of the total milk in the pool. In addition, Kraft's comments stated that separate ice cream or yogurt plants would have all of the milk used in the production of those products priced under a plan that shows no evidence of economic justification.

As the paragraph dealing with the application of protein pricing to milk use in Class II products clearly states, the value of protein in skim milk will be equivalent to the value of the skim milk under the order's present provisions unless the protein content of the milk in question deviates significantly from the marketwide average. Therefore, there should be no material changes in cost to handlers for milk of average or near-average protein content used in Class II. Furthermore, stand-alone ice cream or yogurt plants are not pool plants, and will not be required under the order to pay for their milk receipts on the basis of their protein content. There is no purpose to be served by reopening the hearing for further briefing or evidence, other than delay. The record of this proceeding provides adequate information upon which to base this decision.

Other objections raised by witnesses to the implementation of a multiple component pricing system within the order present no great obstacles to the adoption of such a system. The possibility that pricing milk on the basis of its protein content in one order may create competitive problems for handlers if milk in neighboring marketing areas is not priced in the same manner is overridden by the fact that different systems of pricing between regulated and unregulated handlers who receive pool milk within the proposed merged marketing area are currently causing competitive problems. Handlers in the proposed merged area and in other Federal order marketing areas have been selling their products for some time in competition with unregulated handlers in all areas who pay for their milk receipts on the basis of protein content without encountering any difficulties in the course of such competition serious enough to be mentioned in the hearing record. The competitive area in which different pricing bases appear to cause inequities is in the procurement of milk supplies from producers. Grade A producers with high-protein milk are likely to prefer that their milk be shipped to a cheese plant from which they can obtain the benefit of its protein content than be pooled by a handler with obligations to supply the fluid market. In consequence, there is some concern that the continued inability of pooled handlers to adjust payments to producers for differences in protein content will result in a gradual decline in the protein content of fluid milk products as producers with higher protein content recognize the economic advantage of delivering their milk to the nonpool handlers who will pay more for it.

Under the pricing plan adopted in this decision the protein price is derived from the Minnesota-Wisconsin price, upon which all Federal order prices are based. As a result, costs to handlers under Federal order regulation in neighboring areas should deviate little, if any, from costs to handlers in the merged marketing area. In nearby areas that are not under Federal regulation, of course, there is no assurance of price alignment with the merged Great Basin market for any product. That is a situation under which handlers have operated over the existence of the present orders, and under which handlers will continue to operate.

It was observed at several places in the hearing record that as producers respond to market signals by increasing the protein content of their milk, the protein price will decline. This result would occur because of the method of computing the protein price by dividing the skim portion of the Minnesota-Wisconsin price by the marketwide average percentage of protein in producer milk. As the marketwide average percentage of protein increases over time in response to paying producers on the basis of the protein content of their milk, the protein price as computed under the order will decrease. It was suggested that a more desirable method of computing an appropriate value for protein than that proposed, and adopted in this decision, would be to use the protein content of milk for which the Minnesota-Wisconsin price represents payment as a basis for determining the protein price to be used under the order. Such a price probably would better represent the actual value of protein in relation to the Minnesota-Wisconsin price and the butterfat price, both of which are determined by factors outside the local marketing area. Unfortunately, the protein content of the milk involved in calculating the Minnesota-Wisconsin price is not available.

An exception to the recommended decision filed by Kraft, Inc., a proprietary plant operator which is not a handler under either the Great Basin or Lake Mead order, stated that the recommended method of computing the protein price is unsupported by evidence that it will result in the actual marketplace value of protein, and requested that the proceeding be reopened for additional briefing or evidence. As stated in both this decision and the recommended decision, there is no established market value for protein per se, largely because protein is not easily separable from the skim milk in which it is contained. The pricing scheme in this decision is not based on the actual market value of protein. Therefore, no purpose would be served by reopening the hearing for further briefing or evidence on this point.

The protein price computed under the order will represent the value of skim milk used in manufactured products at the skim milk portion of the Minnesota-Wisconsin price. According to the testimony of proponents' expert witness, there is a direct relationship between the protein content of the skim portion of milk and the cheese yield obtained from the milk. Milk pricing adjusted for protein will better reflect the value of milk delivered by producers and used by handlers than pricing that is adjusted only for butterfat content. Use of the marketwide average protein content in calculating the protein price from the skim milk value of the Minnesota-Wisconsin price will assure that adjustments to handlers' obligations on the basis of protein content will, on the whole, deviate little from the order's present pricing method.

According to several witnesses most of the unregulated handlers in Minnesota and Wisconsin include protein content as a basis for paying producers. These are the handlers whose payments to producers are surveyed in determining the Minnesota-Wisconsin price. As the producers in that area increase the protein content of their milk in response to payments for protein, the Minnesota-Wisconsin price should reflect the added value of increased protein. In fact, as observed by one witness, the present Minnesota-Wisconsin price apparently represents a return for milk containing more protein on the average than milk produced in the merged Great Basin area at the present time. It is possible that the protein price computed under the merged order could be overstated somewhat as a result. Increases in the protein content of Great Basin milk should result in a protein price closer to the actual value of protein reflected in the Minnesota-Wisconsin price.

The suggestion that the order allow handlers to adjust payments to producers for variations in protein content by allowing deductions for less-than-average protein as well as premiums for higher-than-average protein would not result in the uniformity necessary to assure equitable pricing of milk between handlers and among producers. Such deductions and premiums would be voluntary and their rates could vary. There is no reason to believe that such a system would be practiced by all handlers.

The multiple component pricing plan contained in this decision modifies the plan supported at the hearing by proponents. Instead of full plant accounting for protein, as well as butterfat, used by a handler, the assumption will be made that the percentage of protein contained in the skim milk portion of each handler's receipts of producer milk is constant for any particular month, regardless of the class in which it is used. According to the testimony of some of those witnesses most experienced with the use of protein and nonfat solids in milk pricing, protein and other nonfat solids are evenly distributed throughout skim milk and cannot easily be separated from it, as butterfat is. Although proponents altered their proposal to require that protein and butterfat be accounted for in fluid form on a used-to-produce basis, such a procedure would still require fluid milk handlers to incur extra expenditures for testing and accounting for protein and butterfat in fluid milk, fluid cream and nonfluid ingredients in all milk products. Such extensive testing and accounting would represent unnecessary and burdensome requirements for handlers who currently do not have the equipment or personnel necessary to comply with such a provision. Under the provisions adopted, handlers would be responsible for reporting the protein and butterfat content of milk received from producers and cooperative association handlers that is to be priced and pooled under the order. The percentage of protein contained in the skim milk portion of such receipts could then be used to calculate the pounds of protein in skim milk in every step of the accounting procedure at which the pounds of protein would need to be known for pricing purposes.

A system under which handlers are required to report the protein content of only their producers' milk is not unduly burdensome. It is apparent in the hearing record that protein testing of producer milk in the marketing area is widespread. The handlers of most producer milk either have the equipment and personnel required for protein testing, and are currently using protein testing as a basis for paying producers, or they have close business associations with handlers who perform such testing. One proprietary handler who processes only fluid milk products, for instance, diverts all of the milk of its nonmember producers that is surplus to its fluid operation to the cheese plant of another handler. The cheese plant operator pays for milk received from its own producers partially on the basis of the protein content of the milk. Even if the pool plant operator's producers' milk is not ordinarily tested for proetin, it is regularly delivered to a plant at which such testing is available.

In the case of a handler who has neither protein testing capability nor any access to other handlers' facilities at a reasonable cost, the market administrator would be authorized to determine the protein test of producer milk for pool purposes. It is not foreseen that protein testing which must be undertaken by the market administrator would be of an extent great enough to warrant any increase in the maximum marketing service deduction allowed from payments to nonmember producers.

Proponent filed comments to the recommended decision excepting to the authorization of the market administrator to establish, as well as verify, the protein tests of producer milk. Proponent stated that such responsibility is not provided in the language of the recommended order or in the legislative authority on which Federal orders are based, and that the record does not support allowing some handlers' testing to be done by the market administrator at the expense of all handlers. Proponent argued further that testimony expressing concerns about the expense of protein testing was not well-founded, and that those persons who testified to wide experience with protein testing indicated that its cost is in line with the cost of testing for butterfat.

For the most part, those handlers testifying to wide experience with protein testing are very large handlers that are most familiar with testing by infra-red analysis, in which many samples can be tested for several components in a short time. In such an operation, the variable cost of obtaining protein tests would be little, if any, different than the cost of determining butterfat tests. However, for small fluid milk handlers who have little reason to be concerned with the protein tests of their producer receipts or their packaged products, the costs of acquiring the necessary equipment and training or hiring the necessary personnel for the purpose of conducting such testing could be excessive. Although protein testing services apparently are available from commercial labs, it is not necessary to require fluid milk handlers to incur such an expense merely for the purpose of obtaining information about the percentage of their producers' milk represented by a component that is of no commercial value to the handler.

The Act and many Federal milk orders authorize verification and testing when such activities are necessary to administer the terms of the order. At this time, the regulatory and reporting burden of requiring fluid milk handlers to undertake the testing activities that are required by the adoption of multiple component pricing could be unreasonably onerous on small handlers. Therefore, the market administrator is authorized under the order's marketing services provision to establish, as well as verify, producer tests. Marketing service activities are paid for by an assessment on nonmember producers, not on handlers. Therefore, proponents' concern that testing for some handlers will be done by the market administrator at the expense of all handlers has no basis.

Reservations about the effectiveness of such an accounting system were expressed by proponents, who hypothesized that handlers would be able somehow to manipulate the manner in which milk is received and used according to its protein content for their own financial benefit. It is difficult to see how handlers could arrange to use high-protein milk in cheese and low-protein milk in fluid products while paying for the protein used in Classes II and III on the basis of pro rata distribution of the protein content of producer milk receipts. It would seem that such a system of operation would cost more in terms of planning and execution than any benefit a handler might gain as a result. However, if the testing and accounting provisions of the merged order are not adequate for ensuring that handlers pay the full value of their milk receipts, those provisions can always be amended at a later time.

The problem presented by pricing protein contained in Class II and Class III milk while not taking protein into account in pricing Class I milk can best be solved by leaving the pricing of Class I milk much the same as it is at present. The protein price to be applied to Class II and Class III milk under the merged order would represent the skim milk portion of the Minnesota-Wisconsin price for the month divided by the marketwide percentage of protein in milk pooled during the previous month. The skim value of Class I milk can be determined by multiplying the skim milk portion of the Minnesota-Wisconsin price for the month by the hundredweight of skim milk allocated to Class I. This skim milk value of each handler's Class I milk (not to include the Class I differential) would then be combined with the value of protein in milk used in Class II and Class III to determine a total skim milk/protein value for the marketwide pool. Divided by the pounds of protein in producer milk in the pool, the value would yield a protein price to be paid to producers.

Comments filed in response to the recommended decision by proponents and by The American Jersey Cattle Club and National All-Jersey, Inc., suggested that the protein price paid to producers be referred to as the "producer protein price" rather than the "skim milk/protein price." The comments described the term "skim milk/protein price" as imprecise, misleading, confusing, and as giving a false marketing signal to producers. The term "producer protein price" was described as being simpler and more easily understood. The comments are persuasive. Accordingly, references to the "skim milk/protein price" in this decision and the accompanying order have been changed to "producer protein price." It should, however, be remembered that there is a significant difference between the phrases "protein price" (to handlers) and "producer protein price" (to producers).

Each producer's share of the differential value of the pool should be determined as proposed by proponents, although the mechanics should differ somewhat. The basis of the differential pool would be formed by multiplying the pounds of milk allocated to Class I by the difference between the Class I and Class III prices, and adding the amount computed by multiplying the pounds of milk allocated to Class II by the difference between the Class II and Class III prices. To the Class I and Class II differential values would be added adjustments for such items as overage, reclassified inventory, location of producer milk receipts, and other source milk assigned to Class I. The total value of the differential pool would be divided by the product pounds of producer milk in the pool to determine the rate per hundredweight by which each producer's share of the differential pool would be computed.

As a result of pooling the skim milk/protein and differential values of all producers' milk, producers would be paid on the basis of their total volume of production at a weighted average differential price, the protein contained in their production at the producer protein price per pound, and the butterfat contained in their production at the butterfat price per pound. Because the value of butterfat would not be affected by the products in which it is used, there is no need to pool butterfat values.

The multiple component pricing plan adopted in this decision is not necessarily intended to be a model for inclusion in other Federal milk orders. The terms and provisions of each order must be tailored to the peculiar marketing conditions existing in each marketing area, as the provisions of this order have been determined by the conditions in the merged Great Basin marketing area. As marketing conditions change, or if the provisions adopted in this decision are found to be inadequate, the order should be amended to assure orderly marketing.

The National Milk Producers Federation (NMPF), an organization of dairy farmer cooperatives, and the Holstein-Freisian Association of America filed comments relating to the status of the multiple component pricing plan adopted in this decision as a "landmark" upon which other orders would necessarily be modeled. NMPF argued that protein pricing would not represent the best possible milk pricing plan for marketing areas with substantial production of butter and nonfat dry milk, and urged the Department not to consider it such a model. The Holstein-Freisian Association, in spite of the immediately preceding paragraph, expressed concern that the industry will accept this decision as a model for other orders and that it therefore should be drafted as one.

Apparently, it must be reiterated that marketing conditions in other markets differ greatly from the merged Great Basin market in such respects as the percentage of producer milk that is surplus to the fluid needs of the market and the product mix in which such surplus milk is used, among others. Protein may not be the most appropriate nonfat component upon which to base producer payments in a market where butter and nonfat dry milk are the principal surplus products. In addition, improved methods of determining component prices or distributing pool proceeds among producers may be developed.

6. *Handler reports.* Reports required to be submitted by handlers should be similar to those required under the two separate orders, and to those proposed by proponents. However, proponents' proposed handler reporting requirement should be modified to conform with the incorporation of multiple component pricing as adopted in this decision. With respect to protein, only the protein pounds contained in producer milk receipts should be required to be reported. Reporting of the product pounds, skim milk and butterfat contained in other receipts and in utilization, disposition, and month-end inventories would give the market administrator adequate information for purposes of determining handlers' obligations. Handlers' reports of receipts and utilization should be due the seventh day after the end of each month, as is currently the case under the separate orders, and as proposed.

Payroll reports, indicating the receipts for which producers have been paid, should be submitted on or before the twenty-first day after the end of each month, as proposed. The due date for payroll reports would give handlers one more day for preparation of such reports than they currently have under the present Great Basin order. The payroll reporting dates under the present Lake Mead order would be inappropriate for the merged order because the present Lake Mead order requires payments for all pool milk to be collected by the market administrator. The information required to be reported would be the same as under present order provision, except for the addition of the protein content of each producer's milk and the amount paid for protein contained in each producer's milk. Reports of receipts and utilization and payroll reports submitted by partially regulated distributing plant operators who elect to have their obligations computed as if they had been fully regulated handlers for the month should include the same information as provided by fully regulated handlers. Other partially regulated distributing plant operators may report their receipts and utilization in the same manner as they are currently required to report, omitting the protein content of their receipts.

The only deviation proposed from present reporting requirements was that handlers report the protein content of all their milk receipts and of all the uses made of those receipts. Many witnesses contended that such a requirement would add unnecessarily to the costs of testing and accounting for milk protein that would be imposed by adoption of a multiple component pricing scheme. As explained previously in this decision, protein in producer milk would be followed through a handler's operation and classified pro rata with the skim milk in which it is contained. Therefore, reporting of receipts and use of protein aside from its presence in producer milk would be unnecessary.

7. *Classification of milk.* The merged order should incorporate the same uniform classification plan that is currently contained in both of the two individual orders, and is commonly provided in most other Federal milk orders. The plan adopted herein provides, as is the case under the individual orders, for the classification of milk according to use, including rules for determining the classification of milk moved from one plant to another and the classification of shrinkage. The plan also sets forth a procedure for allocating the skim and butterfat pounds contained in a handler's receipts of milk and milk products from various sources to his utilization in each class in order to determine the classification of producer milk. A handler's receipts of cooperative member milk delivered directly from producers' farms to the handler's plant by the cooperative association should be included with the handler's direct receipts of producer milk for the purpose of allocating producer milk to classes of use.

Under the classification plan adopted in this decision, Class I milk would include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content. The remaining volume of the product, which represents the skim milk equivalent of added nonfat milk solids, would be classified as Class III.

Each product designated herein as a Class I product would be considered a "fluid milk product" as defined in the order. In addition to these fluid milk products, Class I milk would include any skim milk and butterfat not specifically accounted for in Class II or III, other than shrinkage permitted in a Class III classification.

Class III milk should include products which are made from surplus approved milk and which compete in a national market with similar products made from manufacturing grade milk. These products include cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese), butter, any milk product in dry form (such as nonfat dry milk), any concentrated milk product in bulk, fluid form that is used to produce a Class III product, and evaporated or condensed milk (plain or sweetened) in a consumer-type package. Additionally, Class III milk should include any product not specified in Class I or Class II.

An intermediate class, Class II, should apply to certain products which can command a higher value than Class III products but which must be competitively priced below Class I in order to compete with non-dairy substitute products or manufactured dairy products that can be used in making Class II products. Class II milk should include skim milk and butterfat disposed of in the form of a "fluid cream product," eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles one of these products. As defined in the order, "fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

Class II milk would also include bulk fluid milk products and bulk cream products disposed of to any commercial food processing establishment or in producer milk diverted to a commercial food processing establishment at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages. In addition, it would include milk used to produce cottage cheese in any form, milkshake and ice milk mixes containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes. Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically-sealed glass or all-metal containers, or aseptically packaged and hermetically sealed in foil-lined paper containers, and certain other products as specified in the order would also be included as Class II milk.

The classification plan adopted herein was proposed by the merger proponent and includes the uniform classification plan contained in many other Federal orders. This plan was developed from exhaustive hearings held on the broad issue of classification in 1971 for 39 markets. A full discussion and appropriate order language on the uniform classification plan are contained in a final decision issued February 19, 1974 (39 FR 8202, 8452, 8712, 9012). A futher decision that refined the present uniform classification plan was issued July 11, 1975 (40 FR 30119). The uniform classification plan was later adopted under both the Great Basin and Lake Mead orders in decisions issued August 17, 1982 (47 FR 37203) and September 19, 1984 (49 FR 37599). These decisions were duly noted on the record of this proceeding.

Proponent testified that adoption of the uniform classification system would result in no change in classification from that currently contained in the two individual orders. He stated that inclusion of the system in the merged order would assure uniformity among such essential aspects of marketing orders as accounting requirements and the movement of packaged Class I and Class II products between border areas. No testimony opposing incorporation of the uniform classification system in the merged order was received. Accordingly, the classification system proposed by proponent should be adopted.

Allocation of receipts to utilization. Under the merged order, a system of allocating handlers' receipts to the various classes should be similar to that adopted in the Assistant Secretary's June 19, 1964 (29 FR 9002), decision for 76 milk orders (including the Great Basin order). This decision dealt with the issue of integrating into each order's regulatory plan milk which is not subject to classified pricing under any order and receipts at a pool plant from other order plants. The decision provides a procedure for allocating over a handler's total utilization his receipts from all sources and for making payment into the producer-settlement fund on unregulated milk allocated to Class I. The allocation system adopted for 76 milk orders in the 1964 decision was incorporated in the Lake Mead order when it was promulgated in 1973.

Since the aforementioned decision sets forth the procedures for dealing with unregulated milk under Federal orders, it is appropriate and necessary that the same system of allocation apply under the proposed merged order. Likewise, the appropriate treatment of other order milk received at pool plants under the merged order should conform with the plan included in the aforesaid decision that is used for coordinating the applicable regulations on all movements of milk between and among Federal order markets.

Merger proponent proposed allocation provisions that essentially would allocate handlers' other source receipts to their utilization as is now provided in the separate orders proposed to be merged. However, proponent advocated allocating the product pounds of receipts, rather than the skim milk and butterfat pounds, to the pounds of milk used in each class. The present method of allocating pounds of skim milk and butterfat in receipts to the skim milk and butterfat in classes of use under the two individual orders should be continued under the merged order.

Proponent witness testified that under a system that prices both the butterfat and protein components of milk the two components should be treated the same in each stage of the accounting and pricing process. Such consistent treatment, he explained, would require that protein, butterfat and skim milk pounds each be allocated to the classes of use, or that product pounds only be allocated. He described the allocation of all three components as being cumbersome, if not unmanageable, and as serving no useful purpose. The witness stated that under the proposal no price distinctions would be made for protein or butterfat based on the classes in which those components are used. He argued that while in the past butterfat disposed of in Class I was priced at a higher rate than butterfat used in manufactured products, at the present time the value of the butterfat content of milk is determined by one differential without regard to the classes in which it is used. He stated that the only purpose of allocating butterfat or protein to the classes in which they are used is to distinguish differences in value according to class. With single butterfat and protein prices applicable to all butterfat and protein in producer milk as provided by the proposal, the witness said, there is no reason to allocate milk components. He concluded that milk can be priced according to its class of use by allocating it only by product pounds without altering the obligations of handlers under the order.

Under the pricing and pooling provisions adopted in this decision, the butterfat and protein components of milk will not be treated in the same manner. The value of protein in producer milk used in Class II and Class III will be pooled with the value of skim milk used in Class I to determine the price to be paid producers for the protein in their milk. The value of butterfat will not be pooled. Even if butterfat and protein were to be priced in a parallel manner, these components have different physical characteristics, and cannot be considered to be handled in the same way. Butterfat is easily separable from the producer milk in which it is contained, and the butterfat content of nearly all fluid milk products is standardized to some extent. The butterfat, or cream, that is separated from producer milk is then further standardized for various cream products, added to ice cream mixes, or churned into butter.

Because butterfat can be separated from the skim milk in which it is contained, butterfat not needed in some products such as fluid milk products may be removed and used in other products, of which it will enhance the value. Protein, however, must be used with the skim milk throughout which it is distributed, even though extra amounts of protein may add no value to the fluid products in which the skim milk is used. Technology has not progressed to the point at which the protein component of milk can be removed from producer milk without use of a manufacturing process or without changing the form of the milk. Likewise, milk protein is not an end product of any commonly-used manufacturing process, and therefore cannot be added back to milk or milk products in its entirety or without other milk solids. The addition of nonfat milk solids to fluid milk in the fortification process involves adding nonprotein solids as well as protein. The use of casein in manufactured products adds only one form of milk protein.

Therefore, there is no reason for butterfat and protein to be treated in the same manner in determining the allocation of producer milk to the classes of use. The butterfat and skim milk portions of milk are separable, may be used separately in a milk plant, and therefore should be accounted for separately. All evidence available indicates that protein is evenly distributed within the skim portion of producer milk, and should be accounted for in proportion with the skim portion.

There are valid reasons for allocating milk to its classes of use by its skim and butterfat components, especially under the pricing system adopted in this decision. With the skim milk portion of milk classified as Class I subject to a skim milk price rather than to a protein price, it will be necessary to compute the pounds of protein by class in order to price only the pounds of protein used in Classes II and III. Allocation of skim milk and butterfat will make available the information necessary to prorate protein pounds to the skim milk allocated to each class, while allowing the calculation of the pounds of producer milk to be priced in each class. The calculation necessary to determine handler obligations under the order provisions adopted in this decision would not be unnecessarily burdensome or complicated for the market administrator. The necessary calculations would be performed by computer, as are nearly all pool computations at this time.

In addition to the need for separate allocation of skim milk and butterfat under the provisions of the merged order, proponent witness' assertion that allocating milk to classes of use by product pounds instead of by skim milk and butterfat pounds would not alter the obligations of handlers under the order is incorrect. The amounts of skim milk and butterfat used in each class established separate limits on the amount of skim milk and butterfat in the various types of receipts that can be allocated to each class. If the amounts of skim milk and butterfat in each class are combined into product pounds it is likely that for any given handler the product pounds in other source receipts allocated to the product pounds of use will result in a greater amount of receipts being allocated than if skim milk and butterfat receipts are allocated under separate limits. Receipts are generally allocated first to Class III use, and only to Class II and Class I when the limits established by Class III use have been exceeded. Therefore, it can be expected that product pound allocation would, in cases where it differs from skim milk and butterfat allocation, always result in pricing fewer pounds of producer milk at the Class III price, and more pounds at the higher Class I and Class II prices.

Shrinkage and overage also should be computed and assigned to classes of use on the basis of skim milk and butterfat, rather than computing shrinkage on the basis of product pounds, protein and butterfat, and prorating it to Classes I and III solely on the basis of product pounds, as proposed by proponent. Shrinkage or overage in butterfat and skim milk often occur in opposite directions in the same dairy plant, as when skim milk shrinkage occurs during the same period as butterfat overage. If such a situation occurred under product pound accounting the shrinkage and overage would tend to cancel each other out. As a result, overage would not be allocated to its full extent and would only be priced as a component, without consideration of any greater value it may have in Class I or Class II use. Shrinkage also would be understated in such a case, and might be prorated quite differently to Class III and Class I than if the actual amount of shrinkage were prorated. With shrinkage computed and prorated by pounds of skim milk and butterfat, protein pounds in shrinkage or overage can still be computed, when necessary for pricing purposes, as a percentage of skim milk.

Milk for which handler is accountable. According to the producer milk definition proposed by IMPA and adopted in the decision, the milk for which a handler is accountable to the pool consists of the milk of a handler's own producers that is received or diverted by the handler and the milk delivered to the handler by a cooperative association directly from its members' farms. The IMPA witness testified that the proposed producer milk definition is a modification of the definitions of producer milk under the Great Basin and Lake Mead milk orders. The language of the proposed order would not allow the receipts of cooperative member milk at the handler's plant to be reported and accounted for by any other handler, including the cooperative. Under the proposed definition, the handler who first received milk from producers into a pool plant is the handler who is to be held responsible for reporting the disposition of the milk and accounting to the pool for its use. Such a procedure will be the most reasonable manner of determining the value of cooperative member milk received and used at a handler's plant, and the simplest to administer.

Some of the language proposed by IMPA for the general accounting and allocation sections of the order would not allow cooperative member milk received at a handler's plant to be accounted for as required by the proposed producer milk definition. Apparently, the proposed language of the general accounting and allocation sections was intended to follow the present Lake Mead order, while the producer milk definition is a mixture of both the Great Basin and Lake Mead orders. Accordingly, the proposed general accounting and allocation sections have been modified to assure that producer milk will be accounted for in the manner required by the producer milk definition.

8. *Class Prices, location adjustments and component prices.* The present Class I price levels at Salt Lake City, Utah, and Las Vegas, Nevada, should be maintained. Although proponents omitted the Class III and basic formula prices from their proposed order as unnecessary for the computation of handler obligations and producer payments, all of the prices normally defined in Federal milk orders, in addition to those necessary to implement multiple component pricing, should be included in the merged Great Basin order. Defining all the necessary prices in the order will make computations included in the determination of handler obligations and producer payments less complex than they otherwise might have to be.

The dates on which prices are to be announced should be the same as those proposed by proponents. The dates on which the class prices and component prices are to be announced are the same as those on which class prices are currently announced under the two separate orders, and are uniform among Federal milk orders generally. Announcement of the weighted average differential and the uniform price for the previous month on the 12th of the month also represents no change from the present orders. There was no opposition to the dates proposed.

Class I price and location adjustments. For the most part, Class I prices at locations within the marketing area should be unchanged from Class I prices under the separate orders. The Class I price for the merged Great Basin market should be the basic formula price for the second preceding month plus a Class I differential of $1.90. This price should apply to plants located in the Salt Lake City area and other areas listed below. For the purpose of applying location adjustments, the marketing area should be divided into three pricing zones. Zone 1, which would be the base zone and would have no price adjustment, should include northern Utah (which includes Salt Lake City) and northeastern Nevada. Zone 2 should comprise the six counties in the southeastern corner of Idaho. A location adjustment of minus 25 cents per hundredweight should apply (in effect, a Class I differential of $1.65). Zone 3 should include all of the area in southeastern Nevada (which includes Las Vegas) and southern Utah, the Wyoming portion of the marketing area, and the four northernmost Idaho counties in the marketing area. A minus 30-cent adjustment should apply ($1.60 Class I differential). This would continue the price level now applicable at Las Vegas.

The location adjustment for each zone, the resulting Class I differential (shown parenthetically), and the territory that should be included in each zone are as follows:

Zone 1—No adjustment ($1.90)

Utah Counties

Box Elder
Cache
Carbon
Daggett
Davis
Duchesne
Emery
Grand
Juab
Millard
Morgan
Rich
Salt Lake
Sanpete
Sevier
Summit
Tooele
Uinta
Utah
Wasatch
Weber

Nevada Counties

Elko
White Pine

Zone 2—Minus 25 cents ($1.65)

Idaho Counties

Bannock
Bear Lake
Caribou
Franklin
Oneida
Power

Zone 3—Minus 30 cents ($1.60)

Idaho Counties

Bingham
Bonneville
Jefferson
Madison

Wyoming Counties

Lincoln
Uinta

Nevada Counties

Clark
Lincoln

Utah Counties

Beaver
Garfield
Iron
Kane
Piute
San Juan
Washington
Wayne

At plant locations outside the marketing area, the Class I price and the weighted average differential price that are applicable at Salt Lake City, Utah, or Las Vegas, Nevada, whichever is nearer to the plant, should be reduced 1.5 cents for each 10 miles that the plant is from the nearer city.

Both the Class I prices to handlers and the weighted average differential prices to producers should be adjusted by the zone locations of the plants at which milk is received. At the present time, the Class I differential at Salt Lake City is $1.90. Prices under the Great Basin order are not adjusted for location at plants within 150 miles of Salt Lake City. For plant locations 150 to 160 miles from Salt Lake City, the Class I and uniform prices are reduced by 22 cents per hundredweight. Prices at locations more than 160 miles from Salt Lake City are reduced by 22 cents plus 1.5 cents per ten miles of distance in excess of 160 miles from Salt Lake City. As a result, Class I and uniform prices are reduced by 29.5 cents at pool plants located in Idaho Falls, Idaho and 23.5 cents at a pool plant in Pocatello, Idaho. Under the merged order the price adjustments at those locations would be minus 30 cents and 25 cents, respectively. Price changes of such small magnitude should create no competitive problems for the handlers affected. Price adjustments at locations in Idaho outside of the merged marketing area will be changed by 2 cents, since 24 cents rather than 22 cents would be provided for the first 160 miles. These adjustments also should be considered too minor to affect competitive relationships considering the relatively large distances involved from Salt Lake City.

The present Class I price differential at Las Vegas, Nevada, is $1.60, which also would be unchanged under the merged order. Currently, prices at locations more than 40 miles from Las Vegas are adjusted at a rate of 1.5 cents per 10 miles distance from Las Vegas. Location adjustments under the present Lake Mead order reduce Class I and uniform prices by 9 cents at Logandale, Nevada; 27 cents at Cedar City, Utah; and 34.5 cents at Beaver, Utah, for milk received at plants in those locations. The pricing plan incorporated in the merged order would remove the price differences at these locations, resulting in Class I and uniform price levels the same as those at Las Vegas. Currently, milk surplus to the Lake Mead market that must be moved to northern Utah for manufacturing use is subject to a 35-cent reduction in price for location. Under the pricing plan adopted in the merged order, milk so moved will be subject to the Zone 1 price effective at Salt Lake City.

Prices at locations outside the merged marketing area will be adjusted from the prices effective at Las Vegas or Salt Lake City, according to distance from the nearer of those two cities. This provision will assure that the present price relationships under the order between Lake Mead-area handlers and California handlers are unchanged.

Proponents supported adoption of their proposed zone pricing plan on the basis that it would facilitate the delivery of milk supplies from producers to different distributing plants and to manufacturing plants as milk is needed so that producer milk can be utilized to the greatest advantage. Proponents expect that the proposed zone pricing system will result in improved equity among handlers, improved service to handlers by producers and cooperatives, and more orderly marketing of producer milk. Proponent witness testified that the zone pricing system would result in prices similar to those effective under the two separate orders, with the exceptions noted in southeastern Nevada and southwestern Utah. He stated that proponents see no justification for lower Class I and uniform prices at Logandale, Nevada, or Beaver, Utah, than at Las Vegas. The witness explained that Beaver is the location of the nearest manufacturing plant for the reserve supplies of milk from the Cedar City area and from southern Nevada. He expressed the opinion that milk which must be moved to a manufacturing plant at additional cost to producers because it is not needed at a nearby bottling plant should not be subject as well to a price adjusted downward for location.

Proponent witness also stated that a zone pricing system removes the confusion of determining location adjustments on the basis of distance and eliminates small price differences between neighboring locations. He explained that prices to producers and handlers similarly situated would be equalized, and that milk marketers would no longer have to consider the location values at each individual distributing plant or manufacturing plant in arranging farm to market hauling.

Proponents recognized the need for higher prices in heavily populated area to compensate for the higher cost of delivering bulk milk to plants located there from outer fringes of the procurement area. The witness stated that the proposed zone pricing system would cover the costs of moving milk to where it is consumed, but would also simplify accounting and computing the costs and returns of milk supplied to handlers by the cooperative associations and by other suppliers. Proponent witness stated that under the proposed zone pricing system Class I costs to handlers would not change significantly from their present levels, and that total returns to producers would increase slightly.

The manager of a distributing plant located in Pocatello, Idaho, testified that, in order for his plant to compete on an equitable basis with handlers regulated under the Southwestern Idaho-Eastern Oregon order, the location adjustment at Pocatello should be increased by 16.5 cents per hundredweight, thereby decreasing the Class I price effective at that location. The witness proposed that the location adjustment at Pocatello be increased from 23.5 cents to 40 cents, rather than the 25-cent adjustment proposed by proponents. He testified that competition for fluid sales in the Pocatello areas comes primarily from distributing plants regulated under the Great Basin Federal milk order and located in northern Utah, and from a distributing plant regulated under the Southwestern Idaho-Eastern Oregon order located at Twin Falls, Idaho. According to the hearing record, the Class I differential at Twin Falls under the Southwestern Idaho-Eastern Oregon order is $1.50, and the Class I differential at Salt Lake City under the Great Basin order is $1.90. The Class I differential at Pocatello under the Great Basin order is currently $1.665, and would be $1.65 under the proposed zone pricing system. The witness complained that because of the present 16.5-cent difference in Class I prices between Twin Falls and Pocatello under the two orders, the Twin Falls handler enjoys a competitive advantage over the Pocatello handler on milk sold in the Pocatello area. He had no complaint about the 23.5-cent difference in prices paid for Class I milk by handlers in Salt Lake City and Pocatello.

Location adjustments are intended to offset the cost of moving bulk milk from the location at which it is produced to locations at which it may be used. Location adjustments are not intended to cover handlers' costs of moving packaged milk from where it is processed to where it is purchased by consumers. The present price relationships between Salt Lake City, Pocatello, and Twin Falls provide incentives for milk to move from where it is produced to where it is needed for processing. A $1.50 Class I price differential apparently results in a high enough price to attract an adequate supply of milk to Twin Falls, Idaho, to fill the fluid requirements of the handler located there. The 16.5-cent (or proposed 15-cent) price difference between Twin Falls and Pocatello is not excessive considering that it is at least 100 miles between the two locations. At the regular location adjustment rate of 1.5 cents per 10 miles of distance, a 15-cent price difference would be entirely appropriate.

The 25-cent price difference between Pocatello and Salt Lake City should make it possible for producer milk to move from an area of heavy milk production in southeastern Idaho to the heavily-populated Salt Lake City area. The 40-cent price difference between Pocatello and Salt Lake City that would result from adopting the handler's proposal would misalign prices between those two locations within the marketing area, and would eliminate the gradual reduction of prices by distance from Salt Lake City to Pocatello, and Salt Lake City to Twin Falls. Furthermore, if competition between handlers for sales, rather than for procurement of producer milk, were the object of location adjustments, a 40-cent price difference between Salt Lake City and Pocatello would put Salt Lake City handlers at an even greater disadvantage in competing for sales in the Pocatello area than they currently have with a 23.5-cent price difference.

A representative of Safeway Stores, Inc., a large multiple-distributing plant handler with a Great Basin pool plant in Salt Lake City and a plant located in Commerce City, California, that is a partially regulated plant under the Lake Mead order, advocated adjusting prices from Las Vegas and Salt Lake City to locations outside the marketing area by 2.2 cents per hundredweight per 10 miles of distance rather than by 1.5 cents. He stated that the present 1.5-cent rate falls far short of covering the actual transportation expenses incurred in moving milk from the Los Angeles area to Las Vegas. He estimated those costs at over 10 cents per hundredweight per 10 miles, but based the proposed 2.2-cent rate on proposals currently under consideration for incorporation in other Federal orders. The witness had no data supporting a 2.2-cent cost for moving bulk milk from California to Nevada. The 10-cent cost he cited pertained solely to movements of packaged milk, and would be irrelevant to any determination of an appropriate location adjustment rate. The costs of transporting bulk milk have undoubtedly increased since the 1.5-cent location adjustment rate was adopted. However, in the absence of any data supporting a location adjustment rate other than the present 1.5 cents, and without any evidence that the 1.5-cent rate is inadequate, there is no basis for adopting a higher rate.

Other than the Pocatello handler's proposal to adopt a different price level at Pocatello, Idaho, there was no opposition expressed at the hearing to adoption of proponents' zone pricing system, even though Class I prices would be increased by 9 cents at the Logandale, Nevada, distributing plant, and by 27 cents at Cedar City, Utah. The change in location pricing at Beaver, Utah, would have no effect on Class I values because all of the milk received there is used solely in cheese, a Class III product. Price changes at locations in the Idaho portion of the marketing area are not significant enough to cause any concern about price misalignment between handlers or about competitive disruptions, as discussed earlier. Proponents' arguments that establishing prices by plants' locations within zones would be less complex and easier to determine than establishing prices by mileage from specific basing points are valid. In addition, although it may not seem wise to eliminate price differences between locations in Las Vegas and southern Utah when a substantial proportion of the reserve milk supply associated with the Lake Mead market is still produced in southwestern Utah, there is evidence that most of the necessary reserves for the Nevada distributing plants can be supplied from Clark County, Nevada, production.

The witness representing Rockview Dairies, which owns the two farms supplying nonmember producer milk to Anderson Dairy, the large Las Vegas distributing plant operator, testified that the handler has contracted for a full supply of milk from California producers, and would no longer be receiving milk from the cooperative associations. As a result, more milk produced in Nevada will be moved to Beaver, Utah, as surplus to the fluid needs of the market than will be hauled from farms in the Beaver area to distributing plants in Nevada. Therefore, there may no longer be any reason for price differences within the southern portion of the merged order. Because the proposed zone pricing system does not materially change prices elsewhere in the marketing area, the system of determining location adjustments by zones for locations within the marketing area, and by mileage from basing points for locations outside the marketing area, should be adopted as proposed.

Class II and Class III prices. Proponent's proposal included a Class II price at the same level existing currently in the Great Basin order, and 5 cents lower than under the Lake Mead order. There was no testimony in support of or opposition to the proposed Class II price level. It is apparent from record evidence, however, that by far the most manufacturing use of milk, in both Classes II and III, occurs in the present Great Basin marketing area. The Class II price as currently determined under that order, therefore, is applicable to most of the milk used in Class II under the two orders and would be the more appropriate Class II price for the merged order.

Proponent's proposed order did not include a Class III price, but used the definition of the present Class III price whenever necessary for pool computations such as determining the differences between the Class I and Class II, or Class III and Class III, prices. In the interest of simplicity, the merged order should include a definition of the Class III price that is the same as in both of the two existing orders. Also, instead of a definition of the "Minnesota-Wisconsin price", as proposed, the merged order should contain a definition of the equivalent "Basic formula price", as do most other orders.

Component prices. The value of the butterfat and protein components of producer milk should be determined by prices per pound, as proposed by the merger proponent. The butterfat and protein prices should also be computed as proposed. In addition, a "skim milk price" should be defined and used to determine the value of the skim portion of producer milk that is allocated to Class I. No provision for a butterfat differential is needed in the merged order because value adjustments for variations in producer butterfat will be made by paying producers a price per pound for the butterfat contained in their milk, rather than by adjusting the price per hundredweight to be paid producers to reflect the butterfat content of their milk.

Proponent witness justified the proposal to bill handlers and pay producers for milk components on a per-pound basis rather than by the use of differentials by explaining that values based on prices per pound would be easier to understand and compute when two components, rather than one, are used to determine the value of milk. Using two price differentials, for protein as well as butterfat, he testified, would be unduly complex and confusing.

The witness explained that under the proposal the value of one pound of butterfat would be determined by adding the value of a pound of skim milk to the current butterfat differential, which represents the difference in value between a pound of butterfat and a pound of skim milk. He indicated that the provisions in the proposed order that describe the computation of the "butterfat price" would base the value of a pound of butterfat on the current market price of butter.

The IMPA witness also addressed the question of determining an appropriate price for protein and concluded that the value of protein depends on the product in which it is used. He indicated that under market conditions current at the time of the hearing, protein would be worth about 80 cents per pound in milk used to make nonfat dry milk, and approximately twice that amount in milk used for cheese. The witness stated that IMPA's proposal would attribute the skim milk portion of the Minnesota-Wisconsin (M-W) price to protein by deducting the value of 3.5 pounds of butterfat from the M-W price, and dividing the result by the marketwide percentage of protein in producer milk during the previous month. Although the protein would thus be valued at the higher end of the possible range of protein prices, he justified that result on the basis of the overwhelmingly large proportion of the surplus milk used in cheese manufacture in the proposed merged marketing area.

The prices for butterfat and protein components should be determined in the manner proposed by proponents. The butterfat price would accurately reflect the market value of butterfat used in butter, and would result in no changes from the present pricing system in the value of butterfat to producers or to handlers. The butterfat price would be used only to determine payments to producers, and would not be included in handlers' obligations to the pool.

The "milk protein price" computation proposed by proponents also serves the purpose for which it is intended—to derive a price-per-pound for protein that will reflect the value to handlers of protein contained in the skim milk portion of producer milk. Because the protein price is to be derived from the skim milk portion of the Minnesota-Wisconsin price and the average protein content of producer milk in the market, the total value of the pool should be unchanged. In addition, due to the minor variations to be expected in the protein content of producer milk received by different handlers, handler obligations resulting from use of the component pricing system should be little different from their present obligations. Also, given the very large proportion of the milk produced for other than fluid uses in the merged marketing area that is used to make cheese, it is appropriate that the protein contained in the milk reflect the value of the product in which it is used.

As discussed earlier, the protein price should apply only to protein in producer skim milk allocated to Classes II and III. The price to be paid to producers for the protein in their milk should represent a combination of the value of protein in Class II and Class III uses and the value of skim milk in Class I use. The computation of the "producer protein price" to producers will be explained in the discussion of the producer protein pool.

The "skim milk price" was not included in proponents' proposed order, but would help to accomplish proponents' objectives of avoiding a charge to handlers for protein used in Class I and maintaining equitable Class I costs between handlers. The skim milk price should be computed by subtracting the differential value of 3.5 pounds of butterfat from the Class III price. The result would represent the value of 100 pounds of skim milk. When added to the differential value of a handler's Class I producer milk, calculated at the difference between the Class I and Class III prices, the handler's Class I skim milk value would determine the handler's obligation to the pool for his milk used in Class I.

The prices included in the merged order that are to be paid by handlers would result in a total pool value little different from that computed under the present pricing system. Total payments to producers also should not vary much from the present system. In fact, if the prices computed under the proposed marged order, as adopted herein, were carried out beyond the nearest full cent, the total pool value would be unchanged from its present level. However, there is no reason to carry out component prices to the tenths of cents when producer prices resulting from the merged pool should vary no more than 1 to 2 cents each month from the prices computed under the present system. Therefore, the butterfat, protein and skim milk prices should be rounded to the nearest whole cent. The prices from which the component prices are computed, however, and intermediate steps in the computations should be carried out as many decimal places as necessary to assure that the rounded component prices are as accurate as possible.

9. *Handlers' value of milk for computing prices to producers.* The value of milk to handlers under the multiple component pricing system adopted herein should reflect the value of protein in handlers' producer milk receipts that are used in Class II and Class III while continuing to price Class I milk without considering its protein content. At the same time, the present level of total costs of milk to all handlers should be miantained. These objectives can be met by determining handlers' obligations and rates of payments to producers through the operation of two marketwide pools. One pool would determine the price to be paid to all pooled producers for their share of the fluid market, and the other pool would determine the rate at which producers should be paid for the protein contained in their milk. Each handler's net obligation to the pool would be determined by subtracting the weighted average differential and producer protein values due to producers from the differential value and skim milk and protein values of the producer milk used by the handler. The value of butterfat to handlers should not be pooled, but should be paid directly to the dairy farmers who produced it.

The differential value of each handler's producer milk receipts used in Class I and Class II should be calculated by mulitplying the hundredwight of producer milk allocated to those classes by the difference between the appropriate class prices applicable at the location of the plant and the Class III price. In addition, the adjustments to the class values of producer milk that are currently included in determining the handler's value of milk should be included in the differential value. Those adjustments include the values of overage, beginning Class III inventory allocated to Class II or to Class I, other source and filled milk receipts allocated to Class I, and certain receipts from unregulated supply plants that are allocated to Class I.

The value adjustments for overage allocated to Class I should be determined by multiplying the Class I product pounds by the difference between the current month's Class I and Class III prices, skim milk pounds by the current month's skim milk price, and butterfat pounds by the current month's butterfat price. The product pounds of overage allocated to Class II should be priced at the difference between the current month's Class II and Class III prices, the Class II butterfat pounds at the butterfat price and the protein pounds pro-rated to the skim milk pounds allocated to Class II at the protein price. The value of Class III overage would be determined by multiplying the protein pounds pro-rated to Class III skim milk overage according to the protein content of the handler's producer skim milk by the protein price, and adding the value of butterfat overage allocated to Class III multiplied by the butterfat price. In the case of reclassified inventory, the value adjustment would be the difference between the current month's Class I and Class II values of the inventory and its value at the previous month's protein and butterfat prices. The value of other source receipts allocated to Class I would be determined by multiplying the Class I product pounds so allocated by the difference between the current month's Class I and Class III prices.

The price to be paid to producers for the protein in their milk should be determined by combining the value of skim milk in Class I producer milk at the skim milk price with the value of protein in the skim milk in Class II and Class III producer milk at the protein price. The total of the skim and protein values, when divided by the total pounds of protein in pooled producer milk, will yield the price to be paid to producers for the protein in their milk. The price so computed should be referred to as the "producer protein price."

Proponent witness proposed that only the differential value of producer milk used in Class I and Class II, with the adjustments for overage, reclassified inventory, etc., be pooled. In order to maintain the present pricing of Class I milk, proponents advocated the use of an adjustment to be deducted from the differential value of a handler's producer milk if the handler's receipts of producer milk contained more than the average percentage of protein in producer milk in the market. The adjustment would assure that the handler would pay no more for the extra protein in his Class I milk than he would if his producer milk receipts contained only the marketwide average percentage of protein. Under the proposal, producers would be paid directly by handlers for the protein in their milk. Protein value would not be included in the pool. Proponents also proposed that payment for the butterfat contained in producer milk be made directly from handlers to producers, and not be included in the pool.

A number of persons protested, at the hearing and in post-hearing briefs, that proponent's method of adjusting the value for protein in Class I milk would result in inequitable costs to handlers for milk used in Class I. According to those opposing such a pricing procedure handlers receiving producer milk with a protein content lower than the marketwide average would pay less for it under such a system than handlers receiving milk with an average or higher-than-average protein content. The witnesses pointed out that such a provision would violate the requirement of the Agricultural Marketing Agreement Act of 1937 that costs of milk to handlers under the order be uniform.

Producers could be paid for the protein contained in their milk without the value of the protein to handlers being pooled if it were not for the necessity of removing the effect of protein content from the value of Class I milk. Handlers apparently are unable to recover the costs of additional protein from the sale of milk containing higher-than-average protein levels, and are unable to separate unneeded protein from the skim milk in which it is contained. Proponents' proposal to remove the effect of charging handlers for protein used in Class I milk by reducing handlers' pool obligations when their producer receipts contain more than the marketwide average percent of protein would result in charging handlers different rates for their receipts used in Class I. Such an outcome would not be equitable, nor would it result in uniform costs to handlers. Therefore, because of the constraints that must be considered in initiating protein pricing under a Federal milk order, handlers' pool obligations for protein and skim milk in producer milk, as adopted in this decision, would be determined on the basis of the skim milk used in Class I instead of the pounds of protein used in Class I. The value of protein in Class II and Class III producer milk would be pooled with the value of skim milk in Class I producer milk to determine the rate at which producers should be paid for the protein in their milk. The difference in pricing methods between Class I and Class II and III would allow for the fact that consumers apparently are unwilling to pay higher prices for milk containing higher percentages of protein, and would assure that handlers' pool obligations or payments to producers are not affected by the protein content of their producer milk receipts allocated to Class I. It is not expected that the producer protein price computed to determine the price producers would be paid for the protein in their milk would differ by more than one cent from the price handlers would be required to pay for the protein in their producer milk receipts allocated to Class II and Class III.

In view of the fact that the skim value of producer milk would be included in the producer protein pool and the butterfat value would be paid for outside of the pool, the differential values of milk used in Class I and Class II, and the adjustments normally made for overage, etc., should be shared among all of the producer milk in the pool through the operation of a differential pool. As proposed by proponent, the "weighted average differential price" that would be computed through the operation of the differential pool would represent the portion of the present uniform price that exceeds the Class III price because the protein, butterfat and skim milk prices will be derived from the Class III, or basic formula, price. As a result of the relationship between the component prices and the basic formula price, it will be possible to compute and announce a uniform price for informational and comparison purposes by simply adding the weighted average differential price to the basic formula price.

Handlers' payments to the producer settlement fund should be determined by subtracting the producer protein and differential values of the producer milk for which the handler is obligated to pay from the use value of the handler's receipts of producer milk, as determined by the handler's obligations to the two pools. As proposed by proponent, only the amount in excess of the producer value of the handler's receipts should be due to the producer-settlement fund. Requiring handlers to pay the full use value of their producer milk to the market administrator would necessitate the movement of excessive amounts of money. It is sufficient that only the amounts of money necessary to equalize payments among producers for their shares of the differential and skim milk/protein pools move into and out of the producer-settlement fund.

None of the adjustments necessary to implement protein pricing apply in the case of butterfat. Both of the existing separate orders provide for handler payments to producers for butterfat in their milk without the necessity of pooling butterfat values. The current method of paying producers directly for the butterfat in their milk rather than including it in the marketwide pool should be continued under the merged order.

Although the total value of the pool would not be changed materially because of adoption of the component pricing system included herein, the distribution of obligations to handlers and payments to producers can be expected to change as they reflect the level of protein in milk as it is produced, received and used.

10. *Payments to producers.* Producer returns should be pooled on a marketwide basis under the merged order so that producers might share equitably in the proceeds from the sale of their milk. Marketwide pooling is not being used in both of the individual markets, and its continuation was incorporated in proponents' proposed order. There was no opposition to marketwide pooling of producer returns.

Adoption of a system of paying producers on the basis of the protein content of their milk, as well as its butterfat content and their share of the Class I and Class II use in the market, necessitates a change in the way payments to producers should be determined. Proponents' proposal of a weighted average differential price to distribute returns from fluid milk uses among producers should be adopted. In addition, instead of paying producers a protein price that is the same as the price charged to handlers for their use of protein in Class II and Class III, as proposed by proponents, the value of protein used in Class II and Class III should be combined with the value of skim milk used in Class I to determine the total value of protein in the pool. In most months, the combined value of Class II and Class III protein and Class I skim milk divided by the pounds of protein in producer milk will result in a producer protein price to producers that is the same as the protein price to handlers when rounded to the nearest whole cent. Although there may be no difference between the protein price to handlers and the producer protein price to producers, the Class I skim milk and Class II and III protein should be pooled to assure that predominantly fluid milk handlers are not required to pay for their Class I milk on the basis of its protein content.

Under the merged order, as under the present separate orders, there would be no need to pool butterfat. The price per pound of butterfat would be paid to producers by the handlers receiving it. Under the present pricing system, handlers are billed according to prices published on the basis of 3.5 percent butterfat. Blend prices to be paid to producers are also announced on a 3.5 percent butterfat basis. Producers, however, are actually paid for their butterfat according to the uniform price adjusted by the butterfat differential to the specific butterfat content of their milk. Amounts paid to producers for the butterfat in their milk should be the same under the component pricing system as under the current system. Also, the portion of the present blend prices under the two separate orders that is due to pooling the higher-valued fluid uses and adjustments would be completely reflected in the weighted average differential price. Only the producer protein price would represent any redistribution of pool proceeds to producers.

Payments to producers and cooperative associations. The merged order should provide for a partial payment to producers on or before the last day of the month, and for a final payment on or before the 17th day of the following month. The partial payment would be for milk received during the first 15 days of the month and should be paid at a rate of 1.2 times the Class III price for the preceding month, but not to exceed the Class I price for the current month. Any proper deductions authorized by the producer could be made from the partial payment for milk delivered by the producer during the first 15 days of the month. The final payment to each producer should be determined by the applicable weighted average differential price adjusted for the location at which the producer's milk is received and the producer protein and butterfat prices, less any partial payment made to such producer and any proper deductions authorized by the producer. When payments are made to a cooperative association in lieu of payments to individual producers, both the partial and final payments should be made prior to the date payments are due to individual producers.

As adopted herein, the payment schedule is the same as now provided in the present Great Basin order. Proponent proposed payment dates similar to those in the present Great Basin order, with some payment dates to cooperative associations and their members moved by 1 or 2 days. There was no opposition to the proposed payment schedule at the hearing. However, in some cases it may be impossible for handlers to pay cooperative associations the full value of their receipts of the cooperative's member milk before the handler has had an opportunity to receive equalization payments from the producer-settlement fund. Because of the potential difficulties in making payments according to the proposed schedule, and because proponents did not explain the differences between their proposal and the payment dates in the present Great Basin order, the merged order should adopt the payment dates specified in the present Great Basin order.

Proponents included in the proposed merged order the present Great Basin rate of partial payment to producers for their milk deliveries during the first 15 days of the month of 1.2 times the previous month's Class III price. However, the witness representing Safeway Stores, Inc., proposed that the rate of partial payment be reduced to the level of the previous month's Class III price, as it is in most other Federal orders in the region, including the present Lake Mead order. In support of his proposal the witness testified that in 1961, when the higher partial payment rate was adopted, it resulted in prices lower than either the uniform price or the Class I price at the time. He stated that as the Class III price has increased, the partial payment rate has exceeded the uniform price and the Class I price. The witness said that the partial payment price has been as much as $1.66 over the uniform price and $.60 over the Class I price in recent years. He asserted that a partial payment should represent only a portion of the total amount due for the first 15 days' deliveries of milk, and certainly should not exceed the amount due for such milk. He argued that the proposed partial payment rate constitutes an overpayment for milk delivered during the first 15 days of the month, and should be reduced to the level of the previous month's Class III price.

A witness for IMPA testified that by the time producers are paid for milk delivered during the first 15 days of the month, they have already delivered 29 days' milk production without receiving any payment at all for the milk delivered. He characterized the present payment schedule as requiring a substantial extension of credit and credit risk which dairy farmers can ill afford. The witness stated that the partial payment provides cash to producers, enabling them to pay their bills and reducing the amount of credit they otherwise would be required to extend to handlers. He testified that farmers today are in a tight cash position, and should not be faced with reduced payments for the milk they have delivered. The witness admitted that a dairy farmer who ceased milk deliveries during the second half of the month could be overpaid for his total production if the partial payment for his first 15 days' milk deliveries is determined by the rate proposed by merger proponents. Proponent witness stated that he would not be opposed to allowing authorized deductions to be made from partial payments to producers.

The partial payment rate under the order applies only to milk deliveries by producers during the first 15 days of the month. It seems clear that payments made for deliveries of milk during the period should not exceed the greatest possible pool value that might accrue to such deliveries. On the other hand, producers under the order usually have delivered nearly an entire month's production before receiving any payment for any of it. This problem could be addressed by requiring partial payments to producers to be made earlier, or by requiring partial payments to be made twice during the month rather than once. In any case, neither of those alternatives was proposed or discussed in any testimony. Accordingly, the partial payment rate determined by multiplying the previous month's Class III price by 1.2 should be adopted, but should never be allowed to exceed the level of the current month's Class I price.

Partial payments at the rate adopted should not be required in the case of producers who ship milk for only a small part of the second half of the month. Given the present relationship of the uniform price and the partial payment rate, such producers would very likely be paid more for their first 15 days' delivery of milk than their entire production for the month is worth. For this reason, partial payments would be required to be made only to producers who continue to ship milk through the 17th day of the month. In addition, overpayments to producers on a partial payment basis can be avoided more easily if deductions deemed proper by the market administrator and authorized by producers are allowed to be made from producers' partial payments. Such a provision would help to assure that producer payments are more evenly spaced throughout the month, and that the deductions to be made from a producer's final payment would not exceed the total amount due to the producer for his milk production during the second half of the month.

11. *Obligations of partially regulated distributing plant operators.* Two options for computing the obligation to the pool of the operator of a partially regulated distributing plant that is also regulated under a State order that provides for marketwide pooling of producer returns should be eliminated. Under the provisions adopted herein, such a handler may settle his obligation only by paying the amount that the Federal order Class I value of the fluid milk products that such plant distributes in the merged Great Basin marketing area (less Class I receipts from pool sources) exceeds the value of the milk at the applicable State order prices. Partially regulated distributing plant operators who are not regulated under a State order that provides for marketwide pooling would continue to have the same options under which their obligations to the pool are currently computed.

Under the present provisions of the Lake Mead order, every partially regulated distributing plant operator has three options that may be used in settlement of its pool obligations:

(a) The plant operator incurs no payment if the operator purchases from any Federal milk order source an amount of milk classified and priced as Class I milk that is equivalent to such operator's fluid milk sales in the marketing area. Such purchases, however, may not be used to offset any obligation under another Federal order.

(b) The plant operator incurs no obligation under the order, except for an administrative assessment charge on the volume of fluid milk products disposed of in the marketing area, if the operator's payments to dairy farmers and to the producer-settlement fund of any Federal order are not less than the pool obligation that such operator would have incurred if such plant had been fully regulated under the order. Under this option, which is commonly referred to as the "Wichita" option, a plant operator whose payments for milk are less than the order's obligations may pay the difference either to its own dairy farmers or to the producer-settlement fund.

(c) The plant operator may choose to pay to the producer-settlement fund the difference between the Class I price and the producer blend price of the order (both prices adjusted for the location of the plant) on all fluid milk products distributed in the marketing area (less any purchases of milk classified and priced as Class I milk under any Federal order).

In addition, a partially regulated distributing plant operator regulated under a State order has a fourth option under which his pool obligation may be determined:

(d) The plant operator may choose to pay to the producer-settlement fund the difference between the Class I price applicable at the location of the plant and the applicable price for the fluid milk products distributed in the marketing area as determined under the State program.

The present Great Basin order contains only options (a), (b) and (c) for determining obligations of partially regulated distributing plants. Those options will be sufficient for determining the pool obligations of such plants not regulated under a State order. For determining the obligations of such plants that are State-regulated, options (a) and (d) will be sufficient.

An IMPA witness testified that some of the options currently available to determine the pool obligations of all partially regulated distributing plant operators are inappropriate for determining the obligations of such handlers that are regulated under a State order providing for marketwide pooling. According to the witness, approximately 20 percent of the fluid milk distributed within the current Lake Mead marketing area is distributed from plants located in southern California. He stated that these handlers are regulated under the California State Pooling Plan. Under the State Plan, he said, regulated handlers are required to pay for the milk they use, according to the class in which it is used, primarily on the basis of the butterfat and solids-not-fat contained in the milk. The value of all the milk received by each California handler is pooled on a marketwide basis and then redistributed to producers on the basis of the individual producer's production quota and base. As a consequence, the payments received by dairy farmers supplying individual plants have no direct relationship to the uses made of their milk by the handlers receiving it, or to the amounts paid into the pool by the receiving handlers.

The witness stated that the payment option currently available only to California State-regulated handlers, which prices sales in the marketing area at the difference between the State order and Federal order prices, is a precise method of determining the exact cost difference of the products. According to the witness, the other payment options available to partially regulated distributing plant operators have no validity in comparing the cost of the products under the State and Federal orders. The witness' position was that the costs attributed to the handler in payment options (b) and (c) above do not accurately represent the actual cost of the milk used by a California-regulated handler in the fluid products distributed within the Federal marketing area. He explained that under California regulation, the price paid by handlers for milk used in fluid products is publicly announced and strictly enforced. He stated further that the milk pooling plan operated by the State of California differs so greatly from the provisions of the Federal order that the values which must be computed under options (b) and (c) above are extremely difficult to determine for California-regulated handlers. Therefore, he concluded, only the present payment option that takes into account the actual prices paid by California handlers for milk used in fluid products should be used to determine the payment obligations of such handlers. Although California handlers would be the only ones affected by the proposed provision under present marketing conditions, the witness stated that the payment provision would apply to any partially regulated distributing plant operators regulated under any State order that provides for marketwide pooling.

The representative of Safeway Stores, Inc., a company operating multiple distributing plants, one of which is a large distributing plant in southern California with fluid milk sales in the Lake Mead marketing area, testifed that the company would prefer to retain in the order all of the payment options currently available to the operator of a partially regulated distributing plant. The witness also proposed changing the language of the provisions governing the obligation of a partially regulated distributing plant operator regulated by a State order. The proposed modification would determine such an obligation on the basis of the difference in value of the fluid milk products distributed in the marketing area under the State and Federal order prices, rather than multiplying the pounds of such disposition by the difference between the applicable prices. The post-hearing brief filed on behalf of the handler expressed the opinion that the importance of retaining the present payment options of a partially regulated distributing plant operator is not as great as the handler considered it to be at the hearing.

The proponents' position with regard to partially regulated distributing plant obligations was supported by a witness representing a Great Basin pool distributing plant that had not yet begun operating at the time of the hearing. The witness supported the proposal in the interest of assuring that all handlers distributing fluid milk products in the marketing area have uniform costs for milk that is used in similar products.

Federal milk orders contain provisions that establish payment obligations of handlers who distribute fluid milk products within the marketing area, but not to an extent great enough to meet pooling standards. These obligations are imposed for the purpose of assuring that all handlers who distribute significant amounts of fluid milk products in the marketing area are subject to comparable costs for such milk. Payment obligations that would result in a cost of milk to a partially regulated distributing plant operator greater than that which would be imposed on a regulated handler would amount to a trade barrier. However, there is no indication that computing a partially regulated distributing plant operator's obligation to the pool on the basis of the difference between the values of the handler's milk under the Federal and State milk orders would be considered inequitable or a barrier to trade. Such a handler would be paying no more for milk distributed within the marketing area than the fully regulated handlers with whom the State-regulated handler is competing. At the same time, fully regulated handlers would be assured that the partially regulated handler has not obtained a competitive advantage by virtue of paying less than they are required to pay for milk used in fluid products.

Proponent witness' testimony in the hearing record is contradictory regarding proponents' intention as to whether the obligation of a partially regulated distributing plant operator should be determined on the basis of the difference in price between the Federal and State orders, or the difference in the values of the fluid milk products concerned as determined by the Federal and State orders. Most of the language in the section of the proposed merged order that deals with obligations of partially regulated distributing plant operators is identical to that in the present separate orders.

Proponents' modification of the language of the present Lake Mead order relating to such handlers that are State-regulated seemed to indicate that proponents wanted the State-regulated handlers' actual cost of milk to be the amount compared to the Federal order value in computing the handlers' pool obligation. However, in exceptions to the recommended decision, proponent argued that its testimony had been misunderstood, and explained that its intent had been to compute the obligation of partially regulated distributing plant operators at the difference between the Federal and State order Class I prices. According to proponent, variations in the butterfat and nonfat solids contents of the milk distributed by both Federally-regulated and State-regulated handlers are to be expected and have no bearing on the Class I differentials charged to handlers. Therefore, proponent stated, such variations should not be considered in any determination of the rate of compensatory payment charged to partially regulated plants.

It is recognized that the Class I prices published by the State of California are for informational and comparison purposes, and do not determine exactly what a California-regulated handler actually pays for milk used in fluid products. However, the published prices do reflect what a handler would pay for milk of a standard butterfat and nonfat solids content, as Federal order prices reflect the value of milk at a standard butterfat content. The content of both butterfat and nonfat solids in milk distributed by both State-regulated and Federally-regulated handlers can be expected to vary between handlers. It would not be appropriate for the market administrator to become involved in determining the nonfat solids and butterfat content of milk distributed in the marketing area by State-regulated handlers in order to calculate the obligations of partially regulated distributing plants. Therefore, for the purpose of determining the amount of payment to be made by State-regulated handlers distributing milk within the Federal order marketing area, consideration of the State and Federal announced Class I prices will be sufficient.

The intent of the section of the merged order dealing with the obligations of partially regulated distributing plants not regulated by a State order was to leave such obligations unchanged. § 1139.76(a)(1)(iv), as published in the recommended decision, would change the computation of obligations such a handler would have to the marketwide pool. Therefore, the language of that paragraph has been changed from the recommended decision so that those handler obligations will remain unchanged.

12. *Administrative provisions—administrative assessment.* The maximum rate of payments by handlers for the cost of administering the merged order should be 4 cents per hundredweight. Such payments are required if the market administrator is to perform the necessary function of administering the merged order. The 4-cent per hundredweight rate is the same as under the two separate orders, and was proposed at the hearing without objection. Continuation of the 4-cent rate should enable the market administrator to administer the merged order effectively. If experience indicates that the merged order can be

administered at a lesser rate, the order provides that the Secretary may adjust the rate downward without the necessity of a hearing.

Deduction for marketing services. The maximum rate of deduction from payments to nonmember producers for the cost of providing marketing services such as butterfat and protein testing and market information should be 6 cents per hundredweight. The marketing service deduction is necessary to reimburse the market administrator for providing such services to producers for whom the services are not provided by a cooperative association.

Currently, the maximum rates under the separate orders are 6 cents under the Great Basin order and 7 cents under the Lake Mead order. A 6-cent rate, which was proposed at the hearing without objection, should enable the market administrator to provide adequate testing and information services to nonmember producers. The marketing service deduction rate, like the administrative assessment, may be adjusted downward if the maximum rate is higher than necessary.

Because operation of the merged order would require that all producers' milk be tested for protein content, the market administrator would be authorized to establish, as well as verify, producer tests. Although not proposed, such a provision is necessary because it is apparent from the hearing record that not all of the handlers of producer milk in the merged order area are equipped to test for protein content.

Merger of the administrative expense, marketing service, and producer-settlement funds. To accomplish the merger of the two orders effectively and equitably, the reserves in the administrative expense funds that have accumulated under the individual orders should be combined. Similar procedures should be followed with respect to the marketing service and producer-settlement fund reserves of the individual orders. Any liabilities of such funds under the individual orders should be paid from the appropriate new funds established under the merged order. Similarly, obligations that are due the several funds under the individual orders should be paid to the appropriate combined fund under the merged order.

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. It is anticipated that all handlers currently regulated under the two orders will continue to be regulated under the merged order. In view of this, it would be an unnecessary administrative and financial burden to allocate back to handlers the reserve funds under the individual orders and then accumulate an adequate reserve for the merged order. It is equally equitable and more efficient to combine the administrative monies accumulated under the individual orders and to pay any liabilities against such funds from the consolidated fund of the merged order.

The money accumulated in the marketing service funds of the individual orders is that which has been paid by producers for whom the market administrator is performing services. The producers who have contributed to the marketing service fund of each order are expected to continue to supply milk for the merged Great Basin market. The consolidation of the reserves in the individual marketing service funds is therefore appropriate in view of the continuation of the marketing service program for these producers under the merged order.

The producer-settlement fund balances in the two orders should be combined so that the producer-settlement fund under the merged order may be continued without interruption. The producers currently supplying the individual markets are expected to continue to supply milk for the merged Great Basin market. Thus, monies now in the producer-settlement funds of the individual orders would be reflected in the uniform prices of the producers who will benefit from the merged order. The combined fund would also serve as a contingency fund from which money would be available to meet obligations [resulting from audit adjustments and otherwise] accruing under one or the other of the separate funds.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously state in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Great Basin and Lake Mead orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement, the Great Basin order which amends and merges the Great Basin and Lake Mead orders, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the merged marketing area, and the minimum prices specified in the tentative marketing agreement and the merged order, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the merged Great Basin order, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held;

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the merged Great Basin order are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1139.85 of the tentative marketing agreement and the merged Great Basin order.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing

Agreement regulating the handling of milk, and an Order amending and merging the orders regulating the handling of milk in the Great Basin and Lake Mead marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Determination of Producer Approval and Representative Period

July 1987 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order, amending and merging the orders regulating the handling of milk in the Great Basin and Lake Mead marketing area is approved or favored by producers, as defined under the terms of the attached order who during such representative period were engaged in the production of milk for sale within the marketing area defined in such attached order.

List of Subjects in 7 CFR 1136 and 1139

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on December 30, 1987.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

Order Amending and Merging the Orders Regulating the Handling of Milk in the Great Basin and Lake Mead Marketing Areas

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Great Basin and Lake Mead marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The merged Great Basin order, which amends and merges the Great Basin and Lake Mead orders, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the merged Great Basin marketing area; and the minimum prices specified in the merged Great Basin order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The merged Great Basin order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the merged Great Basin order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1139.85.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Great Basin and Lake Mead marketing areas (Parts 1136 and 1139, respectively) shall be amended and merged into one order. Part 1136 is superseded thereby, and such vacated part designation shall be reserved for future assignment. The handling of milk in the merged marketing area, to be designated as the "Great Basin marketing area" (Part 1139), shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended and merged as follows:

The provisions of the proposed marketing agreement and order amending and merging the Great Basin and Lake Mead orders contained in the recommended decision issued by the Administrator, AMS, on July 14, 1987, and published in the **Federal Register** on July 21, 1987 (52 FR 27372), shall be and are the terms and provisions of this order, and are set forth in full herein, subject to the following modifications:

1. In § 1139.7, paragraph (d) is revised.

2. In § 1139.30, paragraph (a)(1) is revised.

3. In § 1139.52, paragraph (b) is revised.

4. In § 1139.60, paragraphs (c)(1), (d)(1), (d)(2), (e), (f), (g) and (i) are revised.

5. In § 1139.71, paragraphs (a)(2)(i) and (ii) are revised.

6. In § 1139.76, paragraphs (a)(1)(iv), (b)(2)(i), and (b)(3) are revised.

Accordingly, 7 CFR Part 1136 is proposed to be removed and Part 1139 is proposed to be revised as follows: Part 1136 [Removed]

PART 1139— MILK IN THE GREAT BASIN MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

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1139.1 General provisions.

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1139.85 Assessment for order administration.
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Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

Final Decision—Great Basin and Lake Mead

Subpart—Order Regulating Handling

General Provisions

§ 1139.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference, and made a part of this order.

Definitions

§ 1139.2 Great Basin marketing area.

"Great Basin marketing area" (hereinafter called the "marketing area") means all the territory, including all municipalities and government reservations and installations within, or partially within, the counties listed below:

Utah Counties

All

Nevada Counties

Clark, Elko, Lincoln and White Pine

Wyoming Counties

Lincoln and Uinta

Idaho Counties

Bannock, Bear Lake, Bingham, Bonneville, Caribou, Franklin, Jefferson, Madison, Oneida and Power

§ 1139.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product from a plant to a retail or wholsesale outlet (including any delivery to a distribution point by a vendor, from a plant store, or through a vending machine). The term "route disposition" does not include a delivery to a plant defined in § 1139.7(a) or (b).

§ 1139.4 [Reserved].

§ 1139.5 Distributing plant.

"Distributing plant" means a plant in which approved fluid milk products or filled milk are processed or packaged, and from which fluid milk products are disposed of on routes in the marketing area during the month.

§ 1139.6 Supply plant.

"Supply plant" means a plant from which approved fluid milk products or filled milk are transferred in bulk form during the month to a pool distributing plant.

§ 1139.7 Pool plant.

"Pool plant" means any plant, except a plant defined in § 1139.8, which meets the standards of one or more of paragraphs (a) through (e) of this section:

(a) A distributing plant from which not less than:

(1) 50 percent in any month of September through February, 45 percent in any month of March and April, and 40 percent in any month of May through August of the approved fluid milk products, except filled milk, received at such plant (excluding milk received at such plant from other order plants or dairy farms which is classified in Class II or Class III under this order and which is subject to the pricing and pooling provisions of any other order issued pursuant to the Act), are disposed of as route disposition; and

(2) 15 percent of such receipts are disposed of as route disposition in the marketing area during the month.

(3) If a handler operates more than one distributing plant, the combined receipts and fluid milk product dispositions of such plants may be used as the basis for qualifying all of the plants pursuant to paragraph (a)(1) of this section, provided the handler so notifies the market administrator in writing before the last day of the month for which such consolidation is desired.

(b) A distributing plant that meets the following conditions:

(1) The plant is located in the marketing area;

(2) The plant meets the requirements of paragraph (a)(1) of this section; and

(3) The principal activity of such plant is the processing and distribution of aseptically processed and packaged fluid milk products.

(c) A supply plant from which during the month not less than 50 percent of its approved milk receipts from dairy farmers is transferred to a pool distributing plant pursuant to paragraphs (a) or (b) of this section as fluid milk products. Any supply plant that has qualified as a pool plant in each of the immediately preceding months of August through February shall be a pool plant in each of the following months of March through July unless written request for nonpool status for any of such months is filed by the plant operator with the market administrator prior to the first day of the month the request is to be effective. A plant withdrawn from pool supply plant status may not be reinstated for any subsequent month of the March through July period unless it fulfills the transferring requirement of this paragraph for such month.

(d) Any manufacturing plant, or other plant not defined in paragraphs (a), (b) or (c) of this section, located within the marketing area at which milk is received from producers and which is owned and operated by a cooperative association or federation which delivers at least 45 percent of its producer milk (including that in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the amount in producer milk actually received at such plant) to pool distributing plants during the current month or the 12-month period ending with the current month, if the cooperative association or federation requests pool plant status for such plant in writing before the first day of any month for which such status is to be effective.

(e) The pool plant performance standards in paragraphs (a)(1), (b), (c) or (d) of this section may be reduced or increased by 10 percentage points by the Director of the Dairy Division if that person finds such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

§ 1139.8 Nonpool plant.

"Nonpool plant" means any plant defined in this section, and any other milk receiving, manufacturing, or processing plant, other than a pool plant:

(a) "Producer-handler plant" means a plant operated by a producer-handler as defined in this, or any other order issued pursuant to the Act.

(b) "Other order plant" means a plant as specified under paragraph (b) (1), (2) or (3) of this section that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act:

(1) A distributing plant qualified pursuant to § 1139.7(a) that also meets the pool plant requirements of another Federal order, and from which the Secretary determines a greater quantity of Class I milk was disposed of as route disposition during the month in such other Federal order marketing area than was disposed of as route disposition in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of its Class I route disposition is made in such other marketing area;

(2) A supply plant qualified pursuant to § 1139.7(c) that also meets the pool plant requirements of another Federal order and from which a larger quantity of fluid milk products is transferred during the month to plants regulated under such other order than is transferred to distributing plants under this order, except that transfers to other order plants for Class III dispositions during the months of March through July shall be disregarded for purposes of this computation if the operator of the supply plant elects to retain pool status under this order; or

(3) A plant qualified pursuant to § 1139.7 (a), (b), or (c) which the Secretary determines, despite the provisions of this order, to be fully regulated under another Federal order.

(c) "Exempt plant" means a distributing plant:

(1) Having less than an average of one thousand pounds per day of route dispositions in the marketing area during the month;

(2) Operated by a governmental agency, or a duly accredited college or university, disposing of fluid milk products only through the operation of its own food service, and having no route dispositions in commercial channels; or

(3) From which the total route disposition is to individuals or institutions for charitable purposes without remuneration from such individuals or institutions.

(d) "Partially regulated distributing plant" means a distributing plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(e) "Unregulated supply plant" means a supply plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

§ 1139.9 Handler.

"Handler" means:

(a) Any person who operates one or more pool plants;

(b) Any cooperative association with respect to producer milk diverted for the account of such association pursuant to § 1139.13;

(c) Any cooperative association or federation with respect to milk that is received at the farm for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association or federation; or

(d) Any person who operates a plant defined in § 1139.8 (a) through (e).

§ 1139.10 Producer-handler.

"Producer-handler" means any person who meets all of the following conditions:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by such person in accordance with the conditions set forth in paragraph (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is such person's sole risk, and under such person's complete and exclusive management and control;

(2) Each such farm is owned or operated by and at the role risk of such person, and under such person's complete and exclusive management and control; and

(3) Only such person, and no other person (except a member of such person's immediate family, or a stockholder in the case of a corporate operator) employed on such farm(s) own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced;

(b) Operates a plant in which approved milk is processed or packaged and from which there is route disposition during the month in the marketing area, and:

(1) No fluid milk products are received at such plant during the month or by such person at any other location except:

(i) From the dairy farm(s) specified in (a) of this section; and

(ii) From pool plants by transfer or diversion, or from other order plants, in an amount that is not in excess of the larger of 5,000 pounds or 5 percent of such person's Class I disposition during the month;

(2) Such plant is operated under such person's complete and exclusive management and control and at such person's sole risk, and is not used during the month to process, package, receive or otherwise handle fluid milk products for any other person; and

(3) For the purpose of this section, all fluid milk products disposed of as route disposition or at stores operated by such person or by any person (including the operator of a plant, or vendor) who controls or is controlled by such person (e.g., as an interlocking stockholder) or in which such person (including, in the case of a corporation, any stockholder therein) has a financial interest, shall be considered as having been received at such person's plant; and the utilization for such plant shall include all such route and store dispositions; and

(c) Disposes of no other source milk (except in the fortification of fluid milk products) as Class I milk.

§ 1139.11 Approved milk.

"Approved milk" means any milk or fluid milk product that is approved for fluid consumption by a duly constituted regulatory authority.

§ 1139.12 Producer.

(a) Except as provided in paragraph (b) hereof, "producer" means any person:

(1) Who produces approved milk; and

(2) Whose milk is received at a pool plant or diverted to a nonpool plant within the limits set forth in § 1139.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined under any order (including this order) issued pursuant to the Act;

(2) Any person with respect to milk diverted to a pool plant from another order plant, if the other order designates such person as a producer under that order, and such milk is allocated to Class II or Class III utilization pursuant to § 1139.44(a)(8)(iii) and the corresponding step of § 1139.44(b);

(3) Any person with respect to milk diverted to another order plant if any

part of such milk was allocated to Class I, or the other order defines such person as a producer; or

(4) Any person whose milk is received at a nonpool plant (except another order plant) other than as a diversion from a pool plant after the first delivery of milk from such dairy farmer in any month was received as approved milk at a pool plant, or was otherwise qualified as producer milk.

§ 1139.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk of a producer that is:

(a) Received or diverted by a handler defined in § 1139.9(a) under one of the following conditions:

(1) Received at such handler's pool plant directly from the farm of such producer;

(2) Received at such handler's pool plant from a handler defined in § 1139.9(c); or

(3) Diverted to a nonpool plant subject to the conditions set forth in paragraph (d) in this section;

(b) Diverted by a handler defined in § 1139.9(b) to a nonpool plant subject to the conditions set forth in paragraph (d) of this section;

(c) Received by a handler defined in § 1139.9(c) from the producer's farm in excess of the producer's milk that is received at pool plants pursuant to paragraph (a)(2) of this section. Such producer milk shall be deemed to have been received by the handler at the location of the pool plant to which the milk was delivered;

(d) The following conditions shall apply to producer milk diverted to a nonpool plant:

(1) The milk shall be priced at the location of the plant to which diverted;

(2) A cooperative association or federation may divert for its account the milk of any of its producers from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed 60 percent in the months of April through August and 50 percent in other months of the producer milk which the association or federation causes to be delivered to pool plants or diverted to nonpool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of their combined deliveries of the producer milk which the cooperative associations cause to be delivered to pool plants or diverted pursuant to this section if each association has filed a request in writing with the market administrator before the first day of the month the agreement is effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative association according to a method approved by the market administrator;

(3) The operator of a pool plant (other than a cooperative association or federation) may divert for its account the milk of any producer (other than milk diverted pursuant to paragraph (d)(2) of this section) from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed 60 percent in the months of April through August, and 50 percent in other months of the producer milk received at or diverted from such pool plant for which the operator of such plant is the handler during the month. The milk for which the operator of such plant is the handler from the month may not duplicate milk diverted pursuant to paragraph (d)(2) of this section;

(4) The diversion limits of this paragraph may be increased or decreased by up to 10 percentage points by the Director of the Dairy Division if that person finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the needs for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments;

(5) Diversions in excess of the percentages in paragraphs (d)(2) and (d)(3) of this section shall not be producer milk, and the diverting handler shall designate the milk which is not producer milk. If the handler fails to make such designation, no milk diverted by the handler shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by the producer during the month as producer milk will not be subject to § 1139.12(b)(4); and

(6) Milk of a dairy farmer who was not a producer in the preceding month shall not be eligible for diversion until after one day's milk production from such farmer has been received at a pool plant.

§ 1139.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1139.40(b)(1) from any source other than producers, handlers defined in § 1139.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1139.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1139.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1139.40(b)(1)) for which the handler fails to establish a disposition.

§ 1139.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in consumer-type packages), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), whey, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, or aseptically packaged and hermetically sealed in foil-lined paper containers, and any product that contains by weight less than 6.5 percent nonfat milk solids; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1139.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1139.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milk fat, so that the product (including stabilizers, emulsifiers, or flavoring), resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1139.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of dairy farmers, including producers, which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act", and any amendments thereto;

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk for its members; and

(c) To have its entire activities under the control of its members.

§ 1139.19 Product prices.

The prices specified in this section as computed and published by the Director of the Dairy Division, Agricultural Marketing Service, shall be used in calculating the basic Class II formula price pursuant to § 1139.51(b) and the term "work-day" as used herein shall mean each Monday through Friday that is not a national holiday.

(a) "Butter price" means the simple average of the prices per pound of approved (92-score) butter on the Chicago Mercantile Exchange for the work-days during the first 15 days of the month, using the price reported each week as the price for the day of the report, and for each succeeding work-day until the next price is reported.

(b) "Cheddar cheese price" means the simple average for the work-days during the first 15 days of the month, of the prices per pound of cheddar cheese in 40-pound blocks on the National Cheese Exchange (Green Bay, WI). The price reported for each week shall be used as the price for the day on which reported, and for each succeeding work-day until the next price is reported.

(c) "Nonfat dry milk price" means the simple average of the prices per pound of nonfat dry milk for the work-days during the first 15 days of the month computed as follows:

(1) Use the prices (using the midpoint of any price range as one price) reported each week for high heat, low heat and approved nonfat dry milk, respectively, for the Central States production area;

(2) Compute a simple average of the weekly prices for the three types of nonfat dry milk in paragraph (c)(1) of this section. Such average shall be the daily price for the day on which the prices were reported and for each preceding work-day until the day such prices were previously reported; and

(3) Add the prices determined in paragraph (c)(2) of this section for the work-days during the first 15 days of the month and compute the simple average thereof.

(d) "Edible whey price" means the simple average of the prices per pound of edible whey powder for the Central States production area for the work-days during the first 15 days of the month. The prices used shall be the price (using the midpoint of any price range as one price) reported each week as the daily price for the day on which reported, and for each preceding work-day until the day such price was previously reported.

§ 1139.20 Federation.

Federation means a business organization which is incorporated under state law that is owned and operated by two or more cooperative associations as defined in § 1139.18.

Handler Reports

§ 1139.30 Reports of receipts and utilization.

On or before the seventh day after the end of the month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for such month:

(a) Each handler who operates one or more pool plants shall report for each such plant the quantities of, and the pounds of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler, and the pounds of milk protein contained in such receipts;

(2) Receipts of milk from handlers defined in § 1139.9(c) and the pounds of milk protein contained in such receipts;

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1139.40(b)(1); and

(6) The utilization, disposition or month-end inventories of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required under paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk.

(c) Each handler as defined in § 1139.9 (b) and (c) shall report:

(1) The quantities of, and pounds of skim milk, butterfat and milk protein contained in receipts of milk from producers; and

(2) The utilization or disposition of all skim milk, butterfat and milk protein in such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to all receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1139.31 Payroll reports.

(a) On or before the 21st day after the end of each month, each handler who pays producers pursuant to § 1139.74 shall submit a producer payroll to the market administrator which shall include the following information for each producer from whom milk was received during such month:

(1) The name and address of the producer;

(2) The total pounds and, with respect to final payments, the average butterfat and milk protein content of the milk, and the number of days on which milk was received from each producer;

(3) The minimum payment required by the order, and the amount paid if more than the minimum required;

(4) The amount and nature of any deductions from such payment;

(5) The net amount of payment to the producer; and

(6) The date the payment was made.

(b) On or before the 21st day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payments pursuant to § 1139.76(a)(2) shall report to the market administrator with respect to milk received from each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1139.32 Other reports.

In addition to the reports required pursuant to §§ 1139.30 and 1139.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligations under this order.

Classification of Milk

§ 1139.40 Classes of utilization.

Except as provided in § 1139.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1139.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all butterfat and skim milk:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all butterfat and skim milk:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese (all forms);

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, or aseptically packaged and hermetically sealed in foil-lined paper containers.

(c) *Class III milk.* Class III milk shall be all butterfat and skim milk:

(1) Used to produce:

(i) Cheese, other than cottage cheese in any form;

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk fluid form that is used to produce a Class III product;

(v) Evaporated milk or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any other dairy product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form, and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products, and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1139.15;

(6) In shrinkage assigned pursuant to § 1139.41(a) to the receipts specified in § 1139.41(a)(2) and in shrinkage specified in § 1139.41 (b) and (c).

§ 1139.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1139.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective qualities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator, or received from handlers defined in § 1139.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from handlers defined in § 1139.9(c), except if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and protein and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and protein and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association or federation is the handler pursuant to § 1139.9 (b) or (c), but not in excess of 0.5 percent of skim milk and butterfat, respectively, thereof. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and protein and butterfat tests determined from farm bulk tank samples, the applicable percentage for the cooperative association or federation shall be zero.

§ 1139.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computation pursuant to § 1139.44 (a)(12) and the corresponding step of § 1139.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1139.44(a)(7) or the corresponding step of § 1139.44(b), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1139.44(a) (11) or (12) or the corresponding steps of § 1139.44(b), the skim milk and butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred or diverted in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustments when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1139.40.

(c) *Transfers and diversions to producer-handlers and to exempt plants.* Skim milk or butterfat in the following forms that is transferred or diverted to a producer-handler under this or any other Federal order or to an exempt distributing plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diverisons to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the transferor-handler or divertor-handler so requests and the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignments of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1139.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of approved milk for such nonpool plant; and (*b*) To such nonpool plant's receipts of approved milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of approved milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1139.43 General accounting and classification rules.

(a) Each month the market administrator shall:

(1) Correct for mathematical and other obvious errors all reports filed pursuant to § 1139.30; and

(2) Compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1139.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1139.40, 1139.41, and 1139.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1139.9 (b) or (c) shall be such handler's classification of producer milk.

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1139.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1139.44 Classification of producer milk.

For each month the market administrator shall determine for each handler defined in § 1139.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in § 1139.9(c) by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1139.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from another order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1139.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1139.40(b)(1) that were in inventory at the beginning of the month in packaged form but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1139.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and packaged inventory at the beginning of the month of products specified in § 1139.40(b)(1) that was not subtracted pursuant to paragraphs (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which approved milk status is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order, or from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from another order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; and

(vii) Receipts of milk from a dairy farmer pursuant to § 1139.12(b)(4);

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1139.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1139.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same regulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii) and (iii) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1139.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received; and

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to either paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such excess quantity to be subtracted and the pounds of skim milk in other classes (beginning with the higher priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment.

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1139.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in § 1139.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1139.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1139.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1139.44(12) and the corresponding step of § 1139.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1139.44 on the basis of such report, and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the certification of such report.

(d) Report to each cooperative association that so requests, on or before the 12th day after the end of each month, the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class and Component Prices

§ 1139.50 Class prices and component prices.

Subject to the provisions of § 1139.51 and § 1139.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.90.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division, Agricultural Marketing Service, USDA, and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1139.51(b) for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price for the month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

(d) *Butterfat price.* The butterfat price per pound shall be a figure computed as follows: Subtract from the basic formula price an amount computed by multiplying the current month's butter price, based on the simple average of the wholesale selling prices per pound (using the mid-point of any price range as one price) of approved (92-score) bulk butter, f.o.b. Chicago, as reported by the Department for the month, by 4.025, and divide by 100. Add to the resulting amount the current month's butter price multiplied by 1.15. The sum thereof shall be the price per pound for producer butterfat for the month.

(e) *Milk protein price.* The price for milk protein per pound shall be computed by subtracting from the basic formula price the butterfat price multiplied by 3.5, and dividing the result by the average percentage of protein in all producer milk for the preceding month.

(f) *Skim milk price.* The skim milk price per hundredweight shall be the basic formula price for the month adjusted to remove the value of 3.5 percent butterfat and rounded to the nearest cent. Such adjustment shall be computed by multiplying the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of approved (92-score) bulk butter per pound at Chicago, as reported by the Department for the month, by 4.025 and subtracting the result from the basic formula price.

§ 1139.51 Basic formula prices.

(a) The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of approved (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

(b) The "basic Class II formula price" for the month shall be the basic formula price for the second preceding month plus or minus the amount computed pursuant to paragraphs (b) (1) through (4) of this section.

(1) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1139.19 and yield factors in effect under the Dairy Price Support program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(i) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(*a*) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(*b*) Multiply the butter price by the yield factor used under the Price Support program for determining the butterfat component of the whey value in the cheese price computation; and

(*c*) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(ii) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(*a*) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(*b*) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(2) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(3) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b)(2) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (b)(3) (i) and (ii) of this section:

(i) Combine the total production of American cheese for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of cheddar cheese; and

(ii) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(4) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b)(2) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (b)(3) of this section.

§ 1139.52 Plant location adjustments for handlers.

(a) The Class I price shall be adjusted for plants located in the zones set forth below as follows:

(1) *Zone 1* 0 adjustments

Utah Counties

Box Elder, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Grand, Juab, Millard, Morgan, Rich, Salt Lake, Sanpete, Sevier, Summit, Tooele, Uinta, Utah, Wasatch and Weber.

Nevada Counties

Elko and White Pine.

(2) *Zone 2* Minus $0.25 adjustment

Idaho Counties

Bannock, Bear Lake, Caribou, Franklin, Oneida and Power.

(3) *Zone 3* Minus $0.30 adjustment

Idaho Counties

Bingham, Bonneville, Jefferson and Madison.

Wyoming Counties

Lincoln and Uinta.

Nevada Counties

Clark and Lincoln.

Utah Counties

Beaver, Garfield, Iron, Kane, Piute, San Juan, Washington and Wayne.

(b) For milk received from producers at a plant located outside the zones specified in paragraph (a) of this section, the Class I price applicable at the nearer of the Clark County, Nevada, courthouse or the Salt Lake County, Utah, courthouse shall be reduced by 1.5 cents per hundredweight for each ten miles or fraction thereof of distance by shortest hard-surfaced highway, as determined by the market administrator, between the plant and the nearer of the two courthouses.

(c) For purposes of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any Class I utilization at the transferee plant that is in excess of the sum of receipts at such plant from producers and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to receipts from plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(d) The Class I differential applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) or (b) of this section, except that the differential shall not be less than zero.

§ 1139.53 Announcement of class and component prices.

The market administrator shall announce publicly on or before:

(a) The 5th day of each month, the Class I price for the following month;

(b) The 15th day of each month, the tentative Class II price for the following month; and

(c) The 5th day after the end of each month, the Class III price, the prices for butterfat, milk protein and skim milk computed pursuant to § 1139.50 (d), (e) and (f), and the final Class II price for such month.

§ 1139.54 equivalent price.

If for any reason a price or pricing constituent required by this order for computing class prices or for other purposes is not available as prescribed in this order, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Differential Pool and Handler Obligations

§ 1139.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler defined in § 1139.9(a) with respect to each of such handler's pool plants, and for each handler defined in § 1139.9 (b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1139.44 multiplied by the difference between the Class I price (adjusted pursuant to § 1139.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1139.44 multiplied by the difference between the Class II price and Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1139.44(a)(14) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1139.44(a)(14), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(14) and the corresponding step of § 1139.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1139.44(a)(14) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1139.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1139.44(a)(14) and the corresponding step of § 1139.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1139.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1139.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1139.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from

Class III pursuant to § 1139.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1139.44(a)(9) and the corresponding step of § 1139.44(b), and the value of the protein pounds associated with the skim milk subtacted from Class II pursuant to § 1139.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(9) and the corresponding step of § 1139.44(b) applicable at the location of the pool plant at the current month's Class I–Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1139.44(a)(9) and the corresponding step of § 1139.44(b) at the current month's Class II–Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(7) (i) through (iv) and (vii), and the corresponding step of § 1139.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I–Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(7) (v) and (vi) and the corresponding step of § 1139.44(b) applicable at the location of the transferor-plant at the current month's Class I–Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to (§ 1139.44)(a)(11) and the corresponding step of § 1139.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I–Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1139.44, multiplied by the skim milk price for the month computed pursuant to § 1139.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, multiplied by the protein price for the month computed pursuant to § 1139.50(e).

§ 1139.61 Computation of weighted average differential price.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1139.60, paragraphs (a) through (g), for all handlers who made reports pursuant to § 1139.30 and who made payments pursuant to § 1139.71 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1136.75;

(c) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk;

(2) The total hundredweight for which a value is computed pursuant to § 1139.60(g).

(e) Subtract not more than 5 cents per hundredweight. The result is the "Weighted Average Differential Price".

§ 1139.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1139.60, paragraphs (h) and (i), for all handlers who made reports pursuant to § 1139.30 and who made payments pursuant to § 1139.71 for the preceding month;

(b) Divide the resulting amount by the total pounds of protein in producer milk; and

(c) Round to the nearest whole cent. The result is the "Producer protein price."

§ 1139.63 Uniform price and handlers' obligations for producer milk.

(a) A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1139.61 to the basic formula price for the month.

(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of §§ 1139.73 and 1139.74.

§ 1139.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 12th day after the end of the month the weighted average differential price computed pursuant to § 1139.61, the producer protein price computed pursuant to § 1139.62, and the uniform price computed pursuant to § 1139.63(a).

Payments for Milk

§ 1139.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit payments made by handlers pursuant to §§ 1139.71, 1139.76 and 1139.77, subject to the provisions of § 1139.78, and out of which he shall make payments pursuant to §§ 1139.72 and 1139.77. Payment due a handler from the fund shall be offset as appropriate against payments due from such handlers.

§ 1139.71 Payments to the producer-settlement fund.

(a) On or before the 14th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total obligation of the handler for such month as determined pursuant to § 1139.60.

(2) The sum of:

(i) The value of such handler's receipts of producer milk and milk received from a handler defined in § 1139.9(c) at the weighted average differential price adjusted pursuant to § 1139.75; and

(ii) The value of the protein in such handler's receipts of producer milk and milk received from a handler defined in § 1139.9(c) at the producer protein price computed pursuant to § 1139.62; and

(iii) The value at the weighted average differential price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1139.60(g).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route dispositions from such plant in the marketing area which was allocated to Class I at such plant; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price f.o.b. the other order plant and the Class III price.

§ 1139.72 Payments from the producer-settlement fund.

On or before the 15th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1139.71(a)(2) exceeds the amount computed pursuant to § 1139.71(a)(1). If as such time the balance in the producer-settlement fund in insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as funds are available.

§ 1139.73 Value of producer milk.

(a) The partial payment for milk received from each producer during the first 15 days of the month shall be determined by a rate computed by multiplying the Class III price for the preceding month by 1.2, but not to exceed the current month's Class I price.

(b) The total value of milk received from producers during any month shall be computed as follows:

(1) The weighted average differential price computed pursuant to § 1139.61 subject to the appropriate plant location adjustment times the total hundredweight of milk received from the producer; plus

(2) The total milk protein contained in the producer milk received from the producer multiplied by the producer protein price computed pursuant to § 1139.62; plus

(3) The total butterfat contained in the producer milk received from the producer times the butterfat price computed pursuant to § 1139.50(d).

§ 1139.74 Payments to producers and to cooperative associations.

(a) Except as provided in paragraphs (c), (d) or (e) of this section, each handler shall, on or before the last day of each month, make a partial payment to each producer from whom milk was received during the first 15 days of the month, and who had shipped milk to such handler through the 17th day of the month, at the rate set forth in § 1139.73(a), less proper deductions authorized in writing by such producer;

(b) Except as provided in paragraph (c), (d) or (e) of this section, each handler shall, on or before the 17th day of the following month, make a final payment to each producer for milk received from such producer during the month at no less than the total amount computed in accordance with the provisions set forth in § 1139.73(b) with respect to such milk:

(1) Less any deductions for marketing services pursuant to § 1139.86;

(2) Less payment made pursuant to paragraph (a) of this section for such month;

(3) Less proper deductions authorized in writing by such producer;

(4) Plus or minus adjustments for errors made in previous payments to such producer and proper deductions authorized in writing by such producer; and

(5) If by the date specified such handler has not received full payment from the market administrator pursuant to § 1139.72 for such month, the handler may reduce his payments to producers pro rata by not more than the amount of such underpayment. Payments to producers shall be completed thereafter no later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(c) In the case of a cooperative association authorized by its members to collect payment for their milk, and which has requested such payment from any handler in writing and has so notified the market administrator, payment shall be made for milk received during the month as follows:

(1) On or before the 3rd day prior the last day of the month for milk received from the members of such cooperative association at the rates set forth in § 1139.73(a); and

(2) On or before the 16th day of the following month such handler shall pay to such cooperative association the sum of the payments computed in accordance with the procedures set forth in § 1139.73(b) with respect to deliveries by producer-members of such cooperative association to handler(s) from whom payment has been requested, less the amounts of payments made to such cooperative association pursuant to paragraph (c)(1) of this section, and less the amount retained by handlers as authorized deductions.

(d) Each handler who received milk from producers for which payment is to be made to a cooperative association pursuant to paragraph (c) of this section shall report to such cooperative association and to the market administrator on or before the 7th day of the following month as follows:

(1) The total pounds of milk received during the month and, if requested, the pounds received from each member-producer;

(2) The amount of payment made pursuant to paragraph (c)(1) of this section and the quantity of milk to which such payment applied; and

(3) The amount or rate and nature of any proper deductions authorized to be made from such payments.

(e) Each handler shall pay a cooperative association for milk received from such cooperative association in its capacity as a handler defined in § 1139.9(c), or from a pool plant operated by such association as follows:

(1) On or before the 2nd day prior to the last day of each month for milk received during the first 15 days of the month an amount per hundredweight computed pursuant to the provisions of § 1139.73(a); and

(2) On or before the 15th day of the following month for milk received during the month at not less than the value computed for such milk in accordance with the provisions under § 1139.73(b), less the amounts of payments made to such cooperative association pursuant to paragraph (e)(1) of this section, and less the amount retained by handlers as authorized deductions.

§ 1139.75 Location and zone differentials for producer and nonpool milk.

(a) In making payments computed pursuant to § 1139.72, the market administrator shall reduce the weighted average differential price computed pursuant to § 1139.61 by the location or zone differential applicable at the plant where such milk was first received from producers.

(b) The weighted average differential price applicable to other source milk pursuant to § 1139.71(a)(2)(iii) shall be adjusted at the rates set forth in § 1139.52 (a) or (b) applicable at the location of the nonpool plant from which the milk was received (but not to be less than zero).

§ 1139.76 Payments by a handler operating a partially regulated distributing plant.

(a) Each handler who operates a partially regulated distributing plant that is not subject to a milk classification and pricing program that provides for marketwide pooling of producer returns and is enforced under the authority of a state government shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a)(1) of this section, or, if the handler submits pursuant to §§ 1139.30(b) and 1139.31(b) the information necessary for making the appropriate computations, and so elects, the amount computed pursuant to paragraph (a)(2) of this section:

(1) An amount computed as follows:

(i) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(ii) Subtract the pounds of fluid milk products received at the partially regulated distributing plant;

(*a*) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(*b*) From another nonpool plant that is not another order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(iii) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(iv) Multiply the remaining pounds by the amount the Class I-Class III price difference exceeds the weighted average differential computed pursuant to § 1139.61 as adjusted by the appropriate location or zone differential (but in no case less than 0);

(v) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(1)(iii) of this section by the difference between the Class I price adjusted to the appropriate plant location and the Class III price (but in no case less than 0).

(2) An amount computed as follows:

(i) Determine the value that would have been computed pursuant to § 1139.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(*a*) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or another order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(*b*) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or another order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (a)(2)(i)(*a*) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1139.60(e) shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective other regulating the handling of milk at the transferee-plant, with such uniform price (or weighted average price) adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order;

(*c*) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1139.60 for such handler shall include in lieu of the value of other source milk specified in § 1139.60(g) less the value of such other source milk specified in § 1139.71(a)(2)(iii) a value of milk determined pursuant to § 1139.60 for each nonpool plant that is not another order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1139.7(c) subject to the following conditions:

(*1*) The operator of the partially regulated distributing plant submits with reports filed for the month pursuant to §§ 1139.30(b) and 1139.31(b) similar reports for each nonpool supply plant;

(*2*) The operator of such nonpool supply plant maintains books and records showing the utilization of all milk and milk products received at such plant which are made available if requested by the market administrator for verification purposes; and

(*3*) The value of milk determined pursuant to § 1139.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(ii) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (a)(2)(i) of this section, subtract:

(*a*) The gross payment made by the operator of such partially regulated distributing plant, less the value of the butterfat at the butterfat price specified in § 1139.50(d), for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(*b*) If paragraph (a)(2)(i)(*c*) of this section applies, the gross payments by the operator of such nonpool supply plant, less the value of butterfat at the butterfat price specified in § 1139.50(d), for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(*c*) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant, and like payments by the operator of the nonpool supply plant if paragraph (a)(2)(i)(*c*) of this section applies.

(b) Each handler who operates a partially regulated distributing plant which is subject to marketwide pooling of returns under a milk classification and pricing program that is imposed under the authority of a state government shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund an amount computed as follows:

(1) Determines the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant;

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision under another Federal milk order;

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plants by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Determine the value of the remaining pounds according to the difference between the appropriate Class prices applicable at the location of the partially regulated distributing plant

(but not to be less than zero) as announced by the State order and as determined pursuant to § 1139.50.

§ 1139.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts or other verification discloses errors resulting in money due a producer, a cooperative association, or the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due, and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§ 1139.78 Charges on overdue accounts.

(a) Any unpaid balance due from a handler pursuant to §§ 1139.71, 1139.76, 1139.77, 1139.85 and 1139.86, or under this section shall be increased 1% per month on the next day following the due date of such unpaid obligation and any balance remaining unpaid shall likewise be increased on the first day of each month thereafter until paid.

(b) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Administrative Assessment and Marketing Service Deduction

§ 1139.85 Assessment for order administration.

A pro rata share of the expense of administration of the order shall be paid to the market administrator by each handler on or before the 14th day after the end of the month at the rate of 4 cents per hundredweight, or such lesser amount as the secretary may prescribe, with respect to:

(a) Producer milk (including milk received from a handler defined in § 1139.9(c), but excluding in the case of a cooperative association which is a handler pursuant to § 1139.9(c), milk which was received at the pool plant of another handler) and such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1139.44 (a) (7) and (11) and the corresponding steps of § 1139.44(b), except such other source milk that is excluded from the computations pursuant § 1139.60 (d) and (g);

(c) Route disposition in the marketing area from a partially regulated distributing plant during the month that exceeds the quantity subtracted pursuant to § 1139.76(a)(1)(ii).

§ 1139.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk pursuant to § 1139.74 (other than milk of the handler's own production) shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 14th day after the end of the month.

(b) The monies acquired by the market administrator pursuant to paragraph (a) of this section shall be expended by the market administrator to provide market information, and to verify or establish the weights, samples and tests of milk of any producer for whom a cooperative association is not performing the same services on a comparable basis as determined by the Secretary.

Marketing Agreement Regulating the Handling of Milk in the Great Basin Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do herby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1139.86 to 1139.86, all inclusive, of the order regulating the handling of milk in the Great Basin marketing area (7 CFR Part 1139) which is annexed hereto; and

II. The following provisions:

§ 1139.87 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of July 1987, ________ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1139.88 Effective date.

This marketing aagreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

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H.R. 3030/Pub. L. 100-233

Agricultural Credit Act of 1987. (Jan. 6, 1988; 101 Stat. 1568; 151 pages) Price: $4.25

H.R. 3479/Pub. L. 100-234

Notice to Lessees Numbered 5 Gas Royalty Act of 1987. (Jan. 6, 1988; 101 Stat. 1719; 5 pages) Price: $1.00

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§§ 1.0-1.60	12.00	Apr. 1, 1987
§§ 1.61-1.169	22.00	Apr. 1, 1987
§§ 1.170-1.300	17.00	Apr. 1, 1987
§§ 1.301-1.400	14.00	Apr. 1, 1987
§§ 1.401-1.500	21.00	Apr. 1, 1987
§§ 1.501-1.640	15.00	Apr. 1, 1987
§§ 1.641-1.850	17.00	Apr. 1, 1987
§§ 1.851-1.1000	27.00	Apr. 1, 1987
§§ 1.1001-1.1400	16.00	Apr. 1, 1987
§§ 1.1401-End	20.00	Apr. 1, 1987
2-29	20.00	Apr. 1, 1987
30-39	13.00	Apr. 1, 1987
40-49	12.00	Apr. 1, 1987
50-299	14.00	Apr. 1, 1987
300-499	15.00	Apr. 1, 1987
500-599	8.00	[2] Apr. 1, 1980
600-End	6.00	Apr. 1, 1987
27 Parts:		
1-199	21.00	Apr. 1, 1987
200-End	13.00	Apr. 1, 1987
28	23.00	July 1, 1987
29 Parts:		
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100-499	7.00	July 1, 1987
500-899	24.00	July 1, 1987
900-1899	10.00	July 1, 1987
1900-1910	28.00	July 1, 1987
1911-1925	6.50	July 1, 1987

Title	Price	Revision Date
1926	10.00	July 1, 1987
1927-End	23.00	July 1, 1987
30 Parts:		
0-199	20.00	July 1, 1987
200-699	8.50	July 1, 1987
700-End	18.00	July 1, 1987
31 Parts:		
0-199	12.00	July 1, 1987
200-End	16.00	July 1, 1987
32 Parts:		
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1-39, Vol. III	18.00	[3] July 1, 1984
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630-699	13.00	July 1, 1986
700-799	15.00	July 1, 1987
800-End	16.00	July 1, 1986
33 Parts:		
1-199	27.00	July 1, 1987
200-End	19.00	July 1, 1987
34 Parts:		
1-299	20.00	July 1, 1987
300-399	11.00	July 1, 1987
400-End	23.00	July 1, 1987
35	9.00	July 1, 1987
36 Parts:		
1-199	12.00	July 1, 1987
200-End	19.00	July 1, 1987
37	13.00	July 1, 1987
38 Parts:		
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18-End	16.00	July 1, 1987
39	13.00	July 1, 1987
40 Parts:		
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52	26.00	July 1, 1987
53-60	24.00	July 1, 1987
61-80	12.00	July 1, 1987
81-99	25.00	July 1, 1987
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150-189	18.00	July 1, 1987
190-399	29.00	July 1, 1987
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41 Chapters:		
1, 1-1 to 1-10	13.00	[4] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)	13.00	[4] July 1, 1984
3-6	14.00	[4] July 1, 1984
7	6.00	[4] July 1, 1984
8	4.50	[4] July 1, 1984
9	13.00	[4] July 1, 1984
10-17	9.50	[4] July 1, 1984
18, Vol. I, Parts 1-5	13.00	[4] July 1, 1984
18, Vol. II, Parts 6-19	13.00	[4] July 1, 1984
18, Vol. III, Parts 20-52	13.00	[4] July 1, 1984
19-100	13.00	[4] July 1, 1984
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101	23.00	July 1, 1987
102-200	11.00	July 1, 1987
201-End	8.50	July 1, 1987
42 Parts:		
1-60	15.00	Oct. 1, 1986
61-399	5.50	Oct. 1, 1987
400-429	20.00	Oct. 1, 1986
430-End	15.00	Oct. 1, 1986
43 Parts:		
1-999	15.00	Oct. 1, 1987
1000-3999	24.00	Oct. 1, 1986
4000-End	11.00	Oct. 1, 1986
44	17.00	Oct. 1, 1986
45 Parts:		
1-199	14.00	Oct. 1, 1987
200-499	9.00	Oct. 1, 1986
500-1199	18.00	Oct. 1, 1986
1200-End	13.00	Oct. 1, 1986
46 Parts:		
1-40	13.00	Oct. 1, 1986
41-69	13.00	Oct. 1, 1986
70-89	7.00	Oct. 1, 1987
90-139	11.00	Oct. 1, 1986
140-155	8.50	[5] Oct. 1, 1985
156-165	14.00	Oct. 1, 1986
166-199	13.00	Oct. 1, 1986
200-499	19.00	Oct. 1, 1986
500-End	9.50	Oct. 1, 1986
47 Parts:		
0-19	17.00	Oct. 1, 1986
20-39	18.00	Oct. 1, 1986
40-69	11.00	Oct. 1, 1986
70-79	17.00	Oct. 1, 1986
80-End	20.00	Oct. 1, 1986
48 Chapters:		
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1 (Parts 52-99)	16.00	Oct. 1, 1986
2	27.00	Dec. 31, 1986
3-6	17.00	Oct. 1, 1986
7-14	23.00	Oct. 1, 1986
15-End	22.00	Oct. 1, 1986
49 Parts:		
1-99	10.00	Oct. 1, 1986
100-177	24.00	Oct. 1, 1986
178-199	19.00	Oct. 1, 1987
200-399	17.00	Oct. 1, 1986
400-999	21.00	Oct. 1, 1986
1000-1199	17.00	Oct. 1, 1986
1200-End	17.00	Oct. 1, 1986
50 Parts:		
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[4] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.